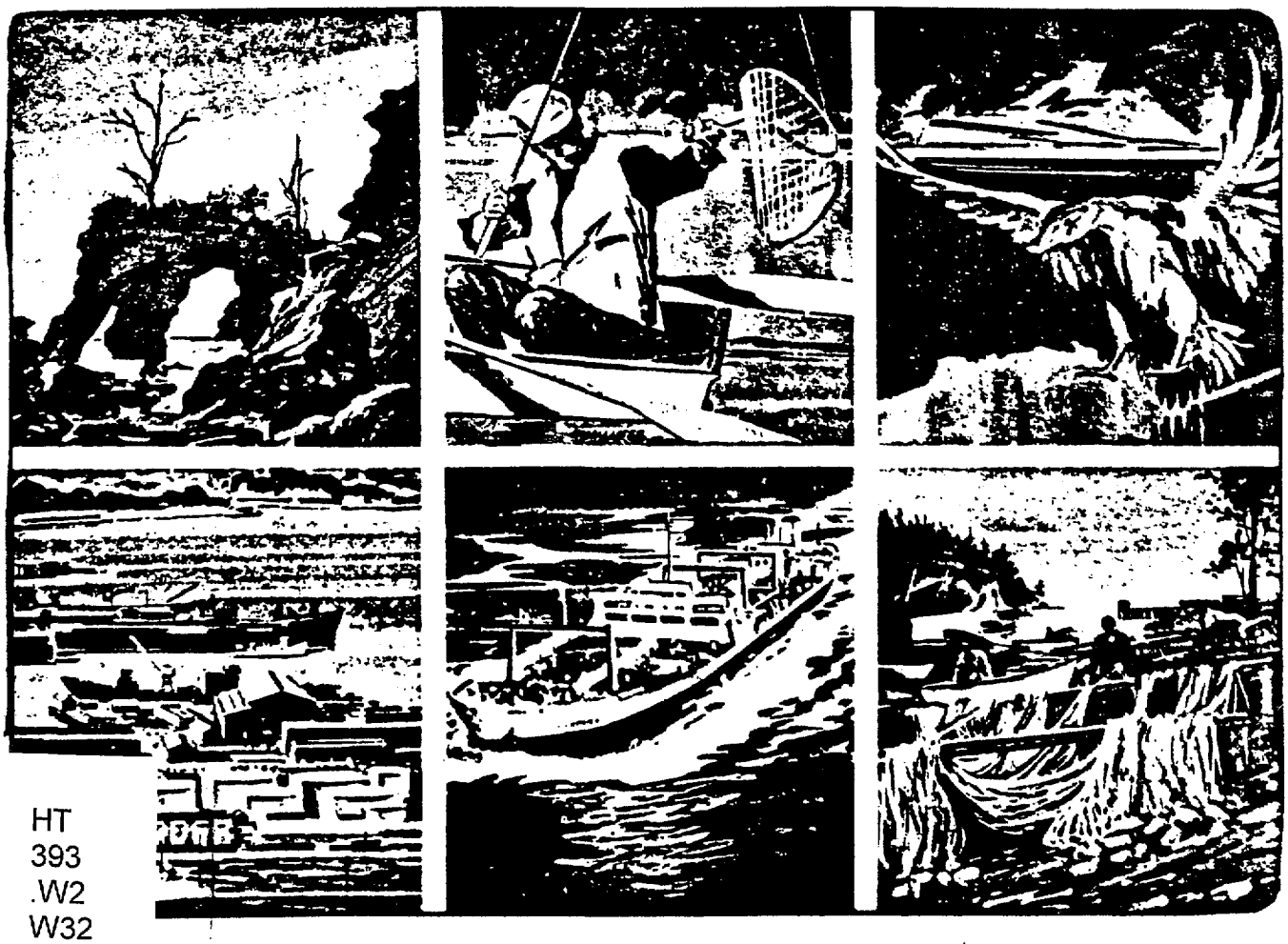
Washington State Coastal Zone Management Program

Amendments



February 1979

STATE OF
WASHINGTON

Dixy Lee Ray
Governor

DEPARTMENT OF ECOLOGY
Olympia, Washington 98504 206/753-2800

February 7, 1979

Ms. Eileen Mulaney
Pacific Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Street N.W.
Washington, D.C. 20235

Dear Ms. Mulaney:

In response to Mr. Peter Coffey's December 18, 1978 letter to Phil Clark, enclosed for your approval is the State of Washington's revised submittal in accordance with Section 305(b) (7)(8) and (9) of the Coastal Zone Management Act.

Proposed amendments to the Washington Coastal Zone Management Program (WCZMP) were submitted originally for your approval on September 27, 1978. This submittal also contained several proposed "refinements" to the WCZMP, including "Federal Consistency", "Excluded Federal Land" and "Authorities". As suggested in Mr. Coffey's December 18th letter we wish the "refinements" to be treated separately from the enclosed "amendments."

The only change made to the "amendments" originally submitted on September 27th is a revision to the language on page 53 concerning the manner in which federal consistency is handled for energy facilities subject to RCW 80.50 (Energy Facility Site Evaluation Council). Language which is nearly identical with that suggested as an attachment to Mr. Coffey's December 18th letter was approved by EFSEC on January 22, 1979 and is incorporated on page 23 of the enclosed document. Relevant correspondence is also enclosed for your information and files.

I wish to thank your staff for their assistance in developing a mutually acceptable amendment package.

Sincerely,

Duane Wegner

Duane Wegner, Supervisor
Shorelands Division

Enclosure

DW:cjl

TABLE OF CONTENTS

ENERGY FACILITY PLANNING PROCESS 1

I. The Washington Energy Facility Site Evaluation Council. 3

II. Management Authorities (Non-EFSEC). 8

A. The Shoreline Management Act of 1971. 8
B. The State Environmental Policy Act. 11
C. Other Management Authorities. 11

III. Relationships 18

A. SEPA and EFSEC. 19
B. SMA and SEPA. 19
C. EFSEC and SMA 19

IV. National Interest Considerations. 23

V. Federal Consistency Procedures for Energy Facilities Subject To Chapter 80.50 RCW. 23

Figure 1 Scope of Management Authorities. 2
Figure 2 The EFSEC Process. 5

Appendix A Shoreline Management Policies. 25

Appendix B Outer Continental Shelf Management Considerations in the Washington Coastal Zone Management Program. 28

I. Legal Considerations. 28

II. States' Rights and Interests in the OCS 30

A. Rights. 30

1. The Outer Continental Shelf Lands Act. 31
2. Deep-Water Ports Act 33
3. Port and Waterway Safety Act 33
4. Coastal Zone Management Act. 34

B. State Interests and Concerns. 35

III. Implications of OCS Development. 36

SHORELINE EROSION PLANNING PROCESS 59

I. Methods for Assessing and Handling the Effects of Erosion 60

A. Current State and Local Programs. 60

1. The Shoreline Management Act and Final Guidelines for Master Program Development 61
2. State Environmental Policy Act. 62
3. Review Process for Corps of Engineers Permit Applications 63
4. Department of Fisheries Bulkhead, Landfill, and Marina Design Criteria. 63
5. Department of Emergency Services. 63

B. State Supported Studies and Projects. 64
1. A Decision-making Procedure for Assessing Erosion Control Structure Permit Applications 64
2. Coastal Zone Atlas. 66
3. Department of Ecology Ongoing Research. 67
4. Accretion Beach Inventory 71

C. Federal Agency Programs 72

1. U.S. Army Corps of Engineers Programs 72
2. The National Flood Insurance Program. 74
3. United States Geological Survey 75
4. Soil Conservation Service 76

II. Articulation of State Policies. 76

A. Substantive State Policy. 77

1. Department of Ecology 77
2. Department of Fisheries 82

B. Procedural and Enabling Legislative Policy. 83

1. Department of Ecology 83
2. Local Governments 84
3. General 85

III. Designation of Areas for Erosion Control Mitigation as Areas of Particular Concern 86

IV. Funding Programs and Other Techniques Used to Meet Management Needs. 86

Maps Seasonal Shore Alignment 68
Geology. 69
Slope Stability. 70

BEACH ACCESS PLANNING PROCESS. 88

I. Procedure for Assessing Public Areas Requiring Access or Protection. 88

A. Supply and Demand. 89

B. Appropriate Types of Access or Protection. 91
C. Current Programs 92

1. Access 93
2. Protection 97
3. Regulatory and Planning Programs 100

II. Beach Definition and Identification of Public Areas Meeting the Definition. 101

A. Beach Definitions 101
B. Identification of Public Areas Meeting the Definition of "Beach". 104

III. Articulation of State Policies. 107

A. Policy Statements 107
B. Secondary Policies. 114

IV. Designation of Shorefront Areas as Areas of Particular Concern 125

V. Identification of Funding Programs Which Can Be Used to Meet Management Needs. 125

Figure 1 Shore Profile. 103

ENERGY FACILITY PLANNING PROCESS

INTRODUCTION

The Coastal Zone Management Act (CZMA) of 1972 was amended in 1976 specifically to link national energy policies (including the development of the Outer Continental Shelf) aimed at greater self-sufficiency with environmental policy designed to preserve and protect the nation's coastal zone. To achieve the optimum balance between these potentially conflicting policies, the amendments require each coastal state with an approved management program to develop a planning process for energy facilities by October 1, 1978 (§ 305(b)(8) CZMA). Furthermore, federal implementing regulations stipulate that the management program of each state "must include a planning process that can anticipate and manage the impacts from energy facilities in or significantly affecting the state's coastal zone" (Title 15 CFR, Part 920).

The purpose of this chapter is to describe Washington's response to these requirements. Prior to a discussion of the processes that combine to form Washington's response, a definition of "energy facility," as provided in the CZMA and its implementing regulations will be helpful.

The regulations (15 CFR § 920.18(b)(2)) state:

> "In determining which energy facilities may significantly affect the coastal zone, states must consider, at a minimum, those facilities listed in subsection 304(5) of the Act. These facilities include any equipment or facility which will be used or expanded primarily (a) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of any energy resource, or (b) for the manufacture, production, or assembly of equipment, machinery, products or devices which are involved in any activity described in (a)."

The energy facilities subject to this planning process include energy facilities in or significantly affecting the coastal zone, and are: (1) those within the jurisdiction of the Washington Energy Facility Site Evaluation Council (EFSEC) (Chapter 80.50 RCW); (2) hydroelectric generating plants; and (3) Outer Continental Shelf (OCS) on-shore support facilities, such as platform fabrication yards, storage depots and crew and supply bases. (Refer to figure 1.)

It will be the primary objective of this chapter to describe how EFSEC and various other state regulatory authorities respond to the federal requirements noted above to: (1) provide for the recognition of state and national interests in energy development; (2) preserve the state's valuable coastal resources in the siting of energy facilities; and (3) provide a coordinated mechanism for the anticipation and management of the impacts of energy facilities in or significantly affecting the Washington Coastal Zone.

For the purpose of this discussion, the description of the Washington coastal zone management energy facility planning process will include a

Figure 1

Scope of Management Authorities

Authority	Hydroelectric Generating Facilities	Platform Fabrication Yards	Storage Depots Crew and Supply Bases	Thermal Power Plants	Uranium Enrichment or Nuclear Fuel Processing	Gasification Plant
EFSEC *				+	+	+
SMA	+	+	+			
OTHERS**	+	+	+			

Authority	Deepwater Ports and other Facilities for the Transfer of Petroleum	Pipelines and Transmission Facilities	Petroleum Refineries and Associated Facilities	Liquified Natural Gas Facilities	Tank Farms
EFSEC	+	+	+	+	+
SMA					
OTHERS					

*Energy facilities of the type regulated by EFSEC, but which do not fall under EFSEC's purview because of their capacities or dimensions remain subject to the other management authorities described in the text of the energy facility planning process.

** See text of planning process

description of the state's major energy facility management and siting authority (EFSEC), as well as other state energy facility management authorities. These include: the Shoreline Management Act of 1971 (SMA), Chapter 90.58 RCW; the State Environmental Policy Act (SEPA), Chapter 43.21 RCW; and, various others. A discussion of the federal consistency procedures (§ 307 CZMA) as they relate to EFSEC, and national interest considerations as they relate to energy facilities will also be provided.

The energy facility planning process described on the following pages takes place within a regional energy planning framework. It is beyond the scope of this chapter to describe this framework in detail. A few brief comments at this point are appropriate, however.

A detailed description of energy planning activities is provided annually by the Pacific Northwest River Basins Commission in their report "Review of Power Planning in the Pacific Northwest." Also, a supply/demand assessment was recently updated by the Northwest Energy Policy Project. This project, which was conducted for the Pacific Northwest Regional Commission, assessed future regional energy demands, the impact of meeting those demands, the consequences of failure to meet demands, opportunities for energy conservation, contingency planning, institutional arrangements, and other related matters. This information will assist energy planning entities in the Pacific Northwest (states, utilities, other energy suppliers, local governments, and federal agencies) to carry out energy planning in a coordinated regional fashion. The Northwest Regional Commission, Pacific Northwest River Basins Commission, Bonneville Power Administration, and Western Systems Coordinating Council are all existing regional bodies which provide an extensive coordinating network to insure cooperative use of energy data, projection, estimates, and policies.

Also, as noted in Section IIC. (State Energy Office). The CZM program relies on a close relationship with the State Energy Office (SEO). This relationship insures utilization of data and information as well as available projections for the supply and demand of oil, natural gas and geothermal/solar sources. (Refer to Section IIC. for an elaboration of SEO responsibilities with respect to the planning process.)

I. THE WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL (EFSEC) (CHAPTER 80.50 RCW)

The EFSEC policies and procedures set forth in Chapter 80.50 RCW (attached) and Title 463 WAC provide the primary mechanisms for anticipating* and managing the impacts of energy facility development in Washington's coastal zone. The EFSEC procedures are founded upon the policy declarations in its enabling legislation: (RCW 80.50.010).

---

* The planning or anticipatory role of EFSEC commences with the actual receipt of an application pursuant to Chapter 80.50 RCW, and only with respect to the particular facility proposed in the application.

"It is the policy of the State of Washington to recognize the pressing need for increased energy facilities, and to insure through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

"It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such actions will be based on these premises:

1. To assure Washington State citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

2. To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the aesthetic and recreational benefits of the air, water, and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

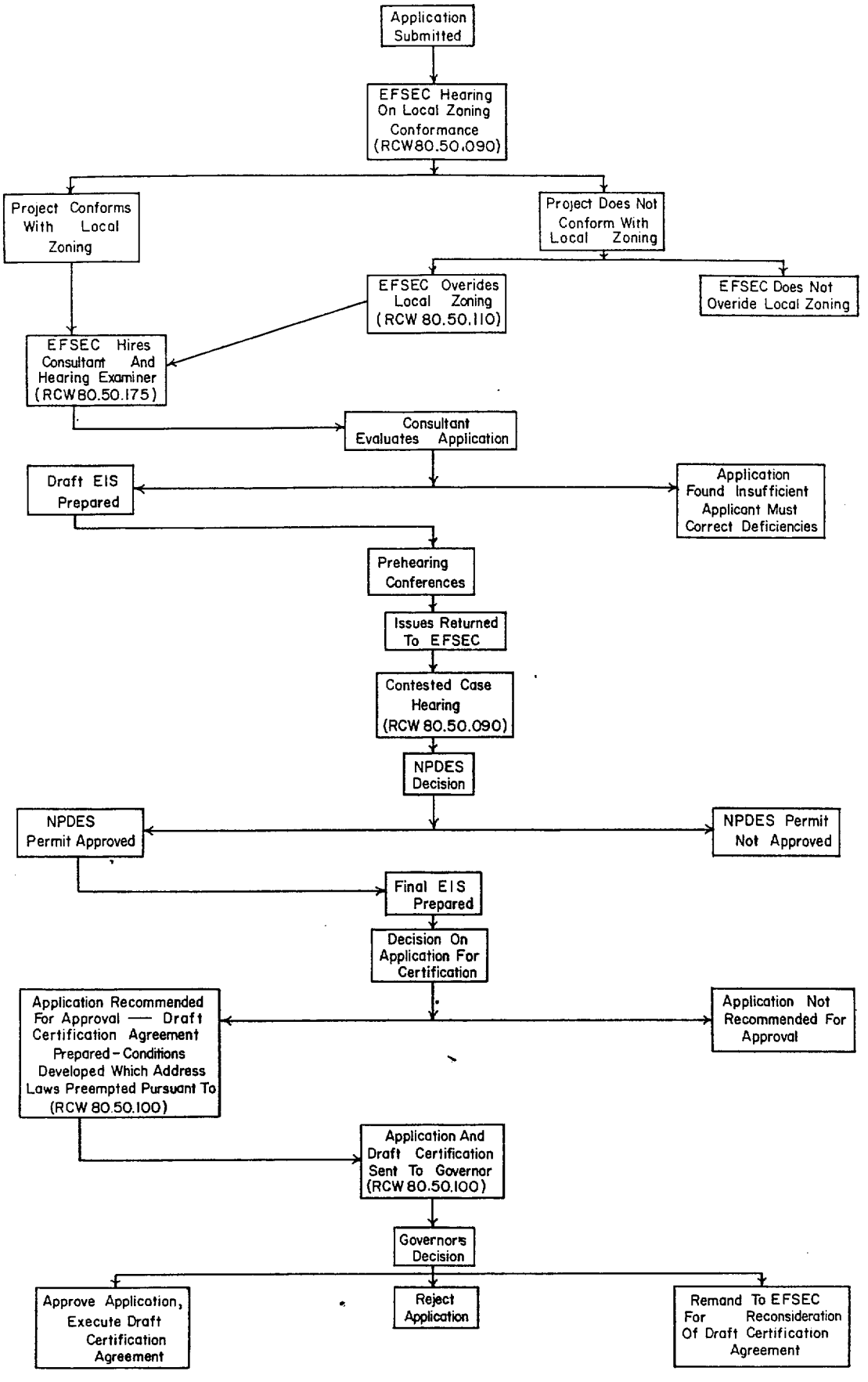
3. To provide abundant energy at reasonable cost."

Fourteen state agencies as well as affected local governments (i.e., cities, counties, and port districts) are represented on EFSEC to provide coordination among the diverse state and local interests affected by the siting of energy facilities and to provide a range of expertise to the decision-making process.* EFSEC receives applications for the siting of energy facilities and provides substantial technical review and public involvement throughout the process (figure 2).

---

* Attorney General Opinion No. 1, 1977 states in effect that EFSEC may override local land use plans and zoning ordinances, thereby providing for the recognition of greater than local interest in the siting of energy facilities in the coastal zone. A copy is attached. Subsequent to this opinion, EFSEC's authority to override local land use plans and zoning ordinances has been strengthened by the Governor's item veto of portions of Substitute Senate Bill 2910. The council has promulgated rules in response to that veto and the Governor's attendant veto message. These rules are codified as Chapter 463-28 WAC and are attached.

THE EFSEC PROCESS



The council must evaluate applications for the following types of energy plants and their associated facilities.*

1. Stationary thermal power plants with a generating capacity of 250,000 kilowatts or more.

2. Floating thermal power plants of 50,000 kilowatts or more.

3. Facilities which have the capacity to receive liquified natural gas in the equivalent of more than 100 million standard cubic feet of natural gas per day which has been transported over marine waters.

4. Facilities which have the capacity of receiving more than an average of 50,000 barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters.

5. Any underground reservoir for receipt and storage of natural gas capable of delivering an average of more than 100 million standard cubic feet of natural gas per day.

6. Facilities which are capable of processing more than 25,000 barrels per day of petroleum into refined products.

7. Crude or refined petroleum or liquid petroleum product transmission pipelines larger than six inches minimum inside diameter between valves with a total length of at least 15 miles.

8. Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipelines larger than 14 inches minimum inside diameter between valves with a total length of at least 15 miles.

Within 12 months, or a mutually agreed upon later date after receiving an application, the council must submit its recommendation along with a draft site certification agreement to the Governor. The Governor has 60 days after receipt of the council's recommendation to accept it, reject it, or send it back to the council for reconsideration or revision of the certification agreement. Once approved, the site certification specifies in contractual form all the environmental regulations and safeguards by which the applicant must abide in constructing and operating the proposed energy facility (RCW 80.50.100).

Two aspects of the EFSEC legislation are significant for the CZM program. First, after the council has received a site application, the attorney general is required to appoint a counsel for the

---

* Facilities that do not fall within EFSEC's jurisdiction by nature of their size (capacity, dimensions, etc.) may still fall within the jurisdiction of the Shoreline Management Act or other state permit authorities.

environment. "The counsel for the environment shall represent the public and its interest in protecting the quality of the environment." (RCW 80.50.080.) The counsel for the environment serves through the term of the certification procedure. Second, the certification issued is in lieu of "any permit, certificate or similar document required by any department, agency, division, bureau, commission, board or political subdivision of this state, whether a member of the council or not." (RCW 80.50.120(3)).

EFSEC anticipates energy facility impacts through its assessment of siting applications and it imposes criteria, through its site certification agreement, for the amelioration of those impacts. EFSEC may, as a condition to the site certification agreement, require the builder of the proposed energy facility to monitor environmental and socio-economic impacts associated with plant construction or operation and provide compensation to affected state agencies or local governments to offset such impacts. Such payments could cover impact planning, mitigation, and public facilities and services needs.* As a committee of state agencies and affected local parties, EFSEC coordinates state and local interests through its review procedure. In addition, RCW 80.50.040(12)(13) provides that the council shall have the following powers:

> "to integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication to present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the State of Washington."

EFSEC's anticipatory role is enhanced through utilization of the "potential site study" option afforded by RCW 80.50.175. This section states in part:

> "(2) The Council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification . . . .
>
> "(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact

---

* In addition, the Department of Ecology administers the Coastal Energy Impact Program (CEIP) as a part of its coastal zone management program. Funds are made available to affected state agencies and local governments for planning or impact mitigation. Assistance is also available to help purchase required public facilities or services. Costs normally paid for by the proposer of the facility are not paid through the CEIP.

information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly wiht the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter . . . ."

The geographic scope of EFSEC is statewide. Facilities that fall within its purview, whether they be in the Washington Coastal Zone or not, are sited through the EFSEC process.

II. MANAGEMENT AUTHORITIES (NON-EFSEC)

As noted previously, EFSEC preempts other state and local laws, rules or regulations for the energy facilities which fall within its jurisdiction. Those major facilities which do not fall within EFSEC's purview are regulated and managed through several other regulatory programs. Refer to figure 1 for a summary of the major energy facility management authorities, their scope and geographic coverage in terms of the Washington Coastal Zone. For the purposes of this discussion, the management authorities are defined as: (1) the Shoreline Management Act; (2) the State Environmental Policy Act; and (3) others (includes air and water quality permits, hazardous waste permits, noise permits, and water appropriation permits).

A. THE SHORELINE MANAGEMENT ACT OF 1971 -- CHAPTER 90.58 RCW

The Shoreline Management Act (SMA) provides policy for the management of most of the state's fresh waters as well as marine waters and adjacent uplands to a distance of at least 200 feet above the ordinary high water mark, and certain other wetland and flood plains areas. The SMA requires that local governments inventory local shorelines, establish a permit system to control shoreline development, and develop a master program to guide future development of the shorelines. A more complete discussion of the Shorelines Program is provided in the federally approved Washington Coastal Zone Management Program (WCZMP) document, pages 119-146.

The SMA guidelines establish four categories of shoreline use: natural; conservancy; rural; and, urban environments. The designation of these environments for shorelines determines all potential uses authorized within the 200-foot zone.

These environments are based upon the existing development pattern, the biophysical capabilities and limitations, and the goals and aspirations of the citizenry. The system was designed to encourage uses in each environment which enhances the character of that environment and to utilize performance standards which regulate use activities in accordance with

state goals and objectives. Although RCW 90.58.140(9) specifically exempts the holder of a state certification pursuant to RCW 80.50 (EFSEC) from obtaining a substantial development permit, local government can represent its interests before EFSEC with regard to the environmental designations of their master programs. (See following discussion on relationship between the SMA and EFSEC.) EFSEC may override local land use and zoning plans, and the Shoreline Act and its associated guidelines. (See Attorney General's Opinion #1, 1977, Chapter 463-28 WAC attached, and RCW 80.50.120.) Considering the criteria in the Final Guidelines (Chapter 173-16 WAC), it is likely that energy facilities would not be deemed appropriate by EFSEC in shoreline areas designated "natural environment" or "conservancy environment." The appropriateness of locating energy facilities in such areas would be determined on a case-by-case basis by EFSEC. Such a determination would be based upon specific information presented at the Contested Case Hearing. As noted elsewhere, if EFSEC deemed a facility appropriate in such an area (e.g., for overriding state or national interest reasons), it is required by RCW 80.50.100 to attach conditions to the site certification agreement designed to "recognize the purpose of laws...that are preempted or superseded."

Impacts of those energy facilities which are not within EFSEC's jurisdiction but within the scope of the SMA would be anticipated and managed in accordance with the policies and procedures of the SMA, including the local master programs and their environment designations. Thus the SMA provides guidelines and standards which allow development compatible with the capabilities of the resource base while precluding certain uses in specific areas. It establishes a land and water use plan which expresses values and priorities of uses for specific geographic areas.

The significance of the SMA for energy facilities planning is that: 1) it provides guidance to the state and local officials represented on EFSEC in representing state/local shoreline management interests before the council; and, 2) the coastal dependent facilities not within EFSEC's jurisdiction will follow the permit process established by the SMA. "Substantial development" on the shoreline requires that developers obtain a permit from a local government (RCW 90.58.140(2)). All such permits are reviewed by the state. This permit process in conjunction with state review insures that such development is compatible with the local master program and the policies of the act. Where appropriate, the state may initiate an appeal to a quasi-judicial shorelines hearings board. (See RCW 90.58.140 and the implementing regulations in Chapter 173-14 WAC.)

Also, the Department of Ecology administers the Coastal Energy Impact Program (CEIP) as a part of its coastal zone management program. The CEIP was established in 1976 by Section 308 of

the Coastal Zone Management Act. The CEIP is designed to provide financial assistance to coastal states and local units of government to deal with the impacts of energy development in the coastal zone. Washington is eligible to participate in the program because it is actively implementing its federally approved Coastal Zone Management Program.

The Coastal Energy Impact Program is administered for the State of Washington by the Department of Ecology. Governor Ray designated the Department of Ecology as the responsible state agency in her March 16, 1977 letter to Secretary of Commerce Juanita Kreps. The Office of Coastal Zone Management (OCZM) of the U.S. Department of Commerce administers the program at the federal level.

The Department of Ecology is thus responsible for allocating according to need, the state's annual CEIP allotment among state and local government agencies. The department is also responsible for coordinating and submitting all CEIP applications from within the state to OCZM.

The CEIP is designed especially to help state and local governments contend with the environmental, social and economic impacts associated with energy development in the coastal zone. CEIP funding will be aimed at achieving the objectives of the Washington Coastal Zone Management Program. The allocation of CEIP assistance is closely coordinated with the Shoreline Management program. This insures that the limited funds are spent in a fashion which furthers the planning and environmental objectives of the Shoreline Management Act.

The CEIP in Washington is limited to impacts felt within the state's officially designated coastal zone as defined in the Washington State Coastal Zone Management Program. This includes impacts on the coastal zone from energy development either in or outside the zone.

The four basic types of assistance under the CEIP available to Washington State are: planning grants, environmental/recreational grants, credit assistance and repayment assistance.

1. Planning grants are available on an 80/20 match basis to help prepare for the consequences of new or expanded energy facilities in the coastal zone.

2. Environmental/recreational grants are available on a 100 percent funding basis to help prevent, reduce, or repair damage to or loss of valuable environmental or recreational resources resulting from coastal energy activity.

3. Credit assistance is available in the form of direct loans or bond guarantees for the purpose of providing new or improved public facilities and servcies required as a result of coastal energy activity.

4. Repayment assistance is available when the recipient of credit assistance cannot meet its CEIP repayment obligations because revenues from coastal energy activity fail to materialize as expected. Repayment assistance can consist of modification of credit terms, refinancing, a supplemental loan or a repayment grant.

B. THE STATE ENVIRONMENTAL POLICY ACT - (CHAPTER 43.21C RCW)

The State Environmental Policy Act (SEPA) is parallel to the National Environmental Policy Act and is the state's strongest statement of a comprehensive environmental policy. (Refer to pages 44-47 in the "Washington State Coastal Zone Management Program.") SEPA requires that an applicant for a state or local government permit fill out an environmental checklist from which a determination is made as to whether or not the proposed action will significantly affect the quality of the environment. If the action is declared significant, then the state or local government agency must prepare an environmental impact statement (EIS). (Chapter 43.21 RCW and Chapter 197-10 WAC.) Local units of government may charge environmental assessment costs against the proposer of the facility. In addition, conditions may be attached to the SMA permit or other local permits to mitigate impacts identified in the EIS.

It is important that SEPA applies to the whole state, not just to the coastal zone or the shoreline. Thus an energy facility not in the coastal zone but significantly affecting the coastal zone would be subject to the same procedures in the sense that impacts are anticipated through the EIS, assuming a local building permit, rezone, or other governmental action is required. Thus it is probable that an "energy facility," as defined in CZMA, which does not go through the EFSEC site certification process or the SMA substantial development permit process would still be channeled through the SEPA EIS process.

C. OTHER MANAGEMENT AUTHORITIES

The following discussion addresses the authorities which play a role in the regulation and management of energy facilities not within the purview of EFSEC. They would in all cases, however, fall within the jurisdiction of SEPA. Since SEPA only provides a means to anticipate impacts, it is important to note the various state authorities which play a role in managing such impacts. As noted above, several types of energy facilities being considered within the scope of this planning process do not fall within the purview of EFSEC. For the purpose of this discussion they are categorized as follows: (1) hydroelectric generating plants; and (2) OCS onshore support facilities, such as platform fabrication yards, pipe coating yards, OCS equipment storage depots and crew and supply bases.

As shown in figure 1, these non-EFSEC facilities may be sited in or outside the Washington Coastal Zone. The SMA is the primary mechanism available to manage the overall environmental impacts of those facilities which are water dependent. Other state permits may be required in addition to the Shoreline Management permit. These other permit authorities play an important role in managing the impacts of energy facilities not subject to the EFSEC process. They are fully coordinated through the administration of the Washington State Coastal Zone Management Program. (Refer to Washington State Coastal Zone Management Program for a discussion of the state CZM coordination procedures.) The coordinative nature of the Washington CZM Program insures consistency between the various state permitting authorities and the SMA. It should be noted here that specific conditions are often attached to these permits to implement consistency with the SMA and to provide for mitigation of impacts associated with the construction or operation of the facility. In some instances, such conditions would require compliance with other related state laws and regulations. In other cases, specific mitigative measures may be required. The nature of conditions that could be imposed depend upon the specific facility, site characteristics, and other factors. Specific conditions are thus determined on a case-by-case basis through the on-going administration of the Washington Coastal Zone Management Program.

The purpose here will be to briefly describe the range of authorities available for managing the impacts of the non-EFSEC energy facilities. Whether or not a particular authority is used to manage impacts may depend upon the specific proposed site and the nature and extent of proposed activities. (Refer to Washington State Coastal Zone Management Program for a complete discussion of the management authorities described in the following section.)

If the potential for air quality degradation exists in developing or operating a facility, a notice of construction must be submitted to the local Air Pollution Control Authority (APCA). Air quality standards which must be met are returned to the applicant in an order of approval. Permitting is the responsibility of the local APCAs of which four are found in Washington's coastal zone. Standards are set by both the Department of Ecology and APCAs. (Page 62 WCZMP document.)

NPDES permits are administered by the Department of Ecology for discharges of wastes into the state's navigable waters. Department of Ecology also holds responsibility for the issuance of state permits for the operation of such facilities as nonoverflow wastewater lagoons and may delegate the state permit authority to local governments for regulating discharges to municipal sewage systems. Control of nonpoint source pollution during construction and other land movement activities may be achieved by local governments through land use regulations such as zoning, surface water drainage ordinances, or construction practice ordinances.

Regulation of the design, installation, and maintenance of on-site sewage disposal systems is shared between state and local levels. The Department of Ecology Department of Social and Health Services, and local health agencies have joint responsibilities in this area.

In response to state requirements, counties, cities, or local health agencies have adopted regulations and ordinances for the handling and treatment of solid wastes. Storage, collection, treatment, or processing of wastes which may take place at an energy facility is subject to regulation. Disposal of non-radioactive hazardous wastes is also regulated by local government. The Department of Ecology, pursuant to state law, has adopted regulations for the handling and disposal of extremely hazardous wastes.

Implementation of the state's Noise Control Act, including enforcement, is designed to be carried out by local governments with Department of Ecology in a coordinative role for planning, regulation modification, and review and approval of local ordinances. Local zoning, land use activities, or plans may provide a basis for development of permissible noise level standards.

To acquire rights to the state's surface or ground waters, it is necessary that a permit first be obtained from the DOE. If there are no major problems and the application meets the requirements of the surface and ground water codes, the application is generally approved. Appropriations which would adversely affect fish and wildlife may not be permitted, depending upon the recommendations of the departments of Fisheries and Game. In many cases a surface water permit must be accompanied by a state hydraulic permit for the device or action necessary for actual removal of appropriated water. The hydraulic permit is issued jointly by the departments of Fisheries and Game.

Flood control zones have been established within the riverine flood plains of 14 major streams in the coastal zone. Zone permits are required within the zones for any works, structures, and improvements which may adversely influence the regimen of the stream or might adversely affect the security of life, health, and property against damage by flood waters. Development regulations including siting and flood-proofing structural requirements are outlined in Chapter 86.16 RCW and Chapter 508-60 WAC. The Department of Ecology is generally responsible for administration of the permits.

Prior to construction of reservoirs meeting certain water storage capacities, a permit must be acquired from the Department of Ecology. Plans and specifications are reviewed in regard to safety.

The State Department of Natural Resources (DNR) holds a major responsibility for leasing state-owned bedlands and uplands. DNR also administers permits for removal of rock, gravel, sand, and silt from state-owned beds of navigable waters, tidelands and shorelands. Right-of-way easements may be granted upon application and approval by DNR for power transmission lines, telephone, and pipelines over and across state-owned aquatic lands.

Local government has several management authorities in controlling the siting and impacts of non-EFSEC energy facilities. Through zoning, building codes and permits, management of siting and development can be achieved. Local governments' police powers allow these units to require compliance with state and local laws, or local and regional plans. Through such mechanisms as conditional use permits or requirements for rezoning, local governments can specify the conditions under which a proposed project will be approved. Project approval might be made contingent upon dedication of land or funds for provision of support facilities. In this manner local governments have the means to mitigate the social, economic and environmental costs of proposed projects.

Each of these management authorities offers some control of the impacts associated with the energy facilities under consideration. Impacts may be anticipated through the majority of these authorities since permits or plan review are often prerequisites to actual construction or operation of facilities.

Other relevant state energy facility management authorities or policies include the following:

Chapter 79.76 RCW - The Geothermal Resources Act requires that permits be obtained from DNR for drilling geothermal wells in the state.

Chapter 78.44 RCW, Chapter 322-18 WAC - Gives DNR the responsibility for administering and enforcing provisions of the Surface Mining Reclamation Act. Operators of surface mining operations must submit and have approved a reclamation plan prior to issuance of a surface mining permit.

RCW 88.16.170 - Declares state policy with respect to oil tankers; provides:

> "Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on Puget Sound and adjacent waters, creates a great potential hazard to important natural resources of the state and to jobs and income dependent on these resources.

"The legislature also recognizes Puget Sound and adjacent waters are a relatively confined salt water environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

"The legislature further recognizes that certain areas of Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

"For these reasons, it is important that large oil tankers be piloted by highly skilled persons who are familiar with local waters and that such tankers have sufficient capability for rapid maneuvering responses.

"It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ Washington State licensed pilots and, if lacking certain safety and maneuvering capability requirements, to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters." (1975 1st ex.s. c 125 1.)

It should be noted that although the above language remains a valid statement of legislative policy, portions of the "Tanker Law" have been struck down by the U.S. Supreme Court in Ray v. Atlantic Richfield. The Court upheld the tug escort provision of the Act and the state pilotage requirements for registered tankers (engaged in foreign trade). The Court struck down the 125,000 dwt limitation and certain safety and maneuvering requirements of the Act. At this writing the U.S. Coast Guard is developing federal regulations for the operation of tank vessels on Puget Sound.

RCW 43.51.685 - Accreted Lands - Jurisdiction - Oil, Gas and Mining leases on Accreted Lands or Conservation Area Lands; Provides for the prohibition of oil and gas exploration in certain critical areas:

"Jurisdiction over the accreted non-trust lands in which the state has an interest along the ocean is hereby transferred from the Department of Natural Resources to the State Parks and Recreation Commission. No such accreted lands shall be sold, leased, or otherwise disposed of, except as herein provided. The Department of Natural Resources may lease the lands within the Washington State Seashore Conservation Area as well as the accreted lands along the ocean in state ownership for the exploration and production of oil and gas: PROVIDED, That oil drilling rigs and equipment will not be placed on the Seashore Conservation Area or state-owned accreted lands. Sale of

sand from accretions shall be made to supply the needs of cranberry growers for cranberry bogs in the vicinity and shall not be prohibited if found by the State Parks and Recreation Commission to be reasonable, and not generally harmful or destructive to the character of the land: PROVIDED FURTHER, That the State Parks and Recreation Commission may grant mining leases for the removal of "black sands" (minerals) from any state-owned nontrust accreted lands and tidelands between the north jetty at the mouth of the Columbia River and a line due west from the North Head Lighthouse: . . ."

RCW 78.52.120, .125, .170 - Oil and Gas Conservation Act: A permit is required from the oil and gas conservation committee prior to drilling for oil or gas. Conditions of approval may be attached to the permit. Such conditions may require compliance with other environmental laws, or regulations such as the local shoreline master program, or measures to offset anticipated impacts from the proposed activity. The committee has authority to regulate drilling, production, spacing, plugging of wells . . . storage, processing and refining of natural gas and oil produced in the state. Specifically, RCW 78.52.125 states:

> "Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the Department of Ecology shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the Department of Ecology shall prepare and submit to each member of the committee a report examining the potential environmental impact of the proposed well and recommendations for committee action thereon. If after consideration of the report the committee determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.
>
> "The committee shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the committee cannot be provided, the drilling permit shall be denied."

Chapter 79.14 RCW - Oil and Gas Leases on State Lands.*

> "The commissioner is authorized to lease public lands for the purpose of prospecting for, developing and producing

---

* Refer to Appendix B for a discussion of OCS management considerations beyond the three-mile limit.

> oil, gas or other hydrocarbon substances. Each such lease is to be composed of not more than six hundred forty acres, except a lease on river bed, lake bed, tide and submerged lands which is to be composed of not more than one thousand nine hundred twenty acres. All leases shall contain such terms and conditions as may be prescribed by the rules and regulations adopted by the commissioner in accordance with the provisions of this chapter." (RCW 79.14.020.)

RCW 80.40.040 - Underground Natural Gas Storage Act: Rights to acquire lands for underground storage of natural gas - A natural gas company must make application to the oil and gas conservation committee for approval to exercise the right of eminent domain to condemn property.

Chapter 90.48 - Water Pollution Control Act. First enacted in 1945 and amended subsequently in 1967, '70, and '73, the Water Pollution Control Act protects the waters of the state from pollution, sets up a permit process, and also provides for the "Coastal Protection Fund." One specific purpose of the fund is to cover "all costs involved in the abatement of pollution related to the discharge of oil" (RCW 98.48.400(b).) Funds expended to abate pollution are recovered from those persons liable for the pollution discharges. As it specifically relates to energy facilities, it would affect all refineries, petroleum transfer points in the state, and the transportation of oil in state waters. RCW 90.48.320 states in part:

> "It shall be unlawful, . . . for oil to enter the waters of the state from any ship or fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause."

Other requirements of the act provide an obligation to collect and remove or contain, treat and disperse spilled oil (RCW 90.48.325) and assesses penalties for discharges of oil (RCW 90.48.350).

Chapter 43.21A.405-420 - Marine Pollution Baseline Study. Authorizes the Department of Ecology to fully determine the affects of oil pollution on the state's 2700 miles of shoreline, 3 million acres of submerged lands of the state, and 300 islands. The legislation provides that the baseline information collected "have multiple use, including use as supporting evidence of environmental damage resulting from oil pollution, . . . of the potential or existing risks and impacts of oil pollution, and for reduction of risks and maintaining water quality standards." The Baseline Studies have been completed for northern Puget Sound.

Chapter 43.21 F - State Energy Office. This act provides relevant energy policy and authority. Chapter 43.21.F.020 states in part:

> "It is the policy of the State of Washington that:
>
> (1) The development and use of a diverse array of energy resources with emphasis on renewable energy resources shall be encouraged; (2) The development and use of energy resources shall be consistent with the statutory environmental policies of the state; and (3) State government shall provide a source of impartial and objective information in order that this energy policy may be enhanced."

Chapter 43.21F.050 charges the State Energy Office with collecting and maintaining data or energy resources; preparing analyses of data as well as analysis of projections and/or forecasts of energy supply and demand; developing and disseminating guidelines for energy conservation plans for use by the government, industries, and private individuals; preparing contingency plans for emergencies; and representing the state's interest on energy matters.

> Significantly, the legislature also gave the office the power to obtain certain otherwise privileged information from energy producers, suppliers, or consumers.
>
> The State Energy Office is headed by a director appointed by the Governor with the consent of the legislature. In April 1981, the State Energy Office will automatically dissolve unless the legislature acts to continue its existence. A CZM position at the State Energy Office is presently being funded through Section 308 (Coastal Energy Impact Program) of the CZMA to effectuate coordination with the Department of Ecology, other state agencies and local government related to the duties of the office.

III. RELATIONSHIPS

The previous discussion substantively responds to the federal requirements for the energy facility planning process contained in 15 CFR, § 920.18(a)(1-5). The energy facility anticipatory and regulatory mechanisms described are capable of adequately addressing energy facilities within the CZMA definition that would be likely to locate in or significantly affect the coastal zone. They also provide a thorough procedure for assessing the suitability of sites for such facilities and provide a legal means to enforce the WCZMP management objectives, including its national interest objectives. The following discussion will focus on the relationship of the various management authorities, especially that of EFSEC and the SMA in further response to § 920.18(a)(4).

A. SEPA AND EFSEC

The relationship of EFSEC and SEPA is relatively straightforward. All EFSEC certification proceedings include the preparation of a SEPA EIS, with EFSEC as the lead agency. It is possible that if a federal permit, such as for dredging, is required, and a NEPA EIS is written, that this document could be used to satisfy SEPA EIS requirements. (Refer to Chapter 463-45 WAC for a detailed description of the EFSEC-SEPA procedures.)

B. SMA AND SEPA

SMA and SEPA combine in the following manner. Local governments issue substantial development permits under SMA in accordance with their master programs. If the development will have a significant affect on the environment, the local government is the lead agency for SEPA. However, if the project also requires a state permit or a federal permit administered by the state, then the state rather than local government may take the lead role. The SEPA guidelines provide for arbitration if the issue cannot be decided among the agencies. (Refer to Chapter 197-10 WAC.)

C. EFSEC AND SMA

The relationship of EFSEC and the SMA is also relatively straight-forward. Even when a proposed energy facility is to be located within the scope of the SMA's geographic coverage, the project is reviewed by EFSEC. Site certification by EFSEC overrides all other state regulatory programs, including the SMA (RCW 80.50.120). The SMA also specifically yields to the EFSEC Law. RCW 90.58.140(9) states:

> "The holder of a certification from the Governor pursuant to Chapter 90.50 RCW shall not be required to obtain a permit* under this section."

However, EFSEC is required by RCW 80.50.100 to consider the substance of the SMA as well as any other law or regulation that it supersedes.

> "If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to conditions to protect state or local governmental or community interests affected by the construction or

---

* "Permit" as so used refers to a substantial development permit issued pursuant to RCW 90.58.140(2).

operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances or rules or regulations promulgated thereunder, that are preempted or superseded." (Emphasis added) (RCW 80.50.100)

This is a significant stipulation as it relates to the meeting of the objectives of the SMA. In essence, this insures that the objectives of the CZMA embodying as it does in Washington State the SMA and its master programs adopted pursuant thereto, will be considered and addressed by EFSEC. The substantive policies, rules and regulations of the SMA which will be considered by EFSEC pursuant to RCW 80.50.100 as potential conditions to draft certification agreements are provided in Appendix A.

If EFSEC review and certification procedures are accomplished in lieu of the SMA, the question remains as to how EFSEC carries out its review and receives comparable data upon which to base its decision. There are several important means by which individuals, and local, state, and federal agencies may bring their respective CZM interests and concerns into the EFSEC process. Thus as will be noted infra, EFSEC has ample opportunity to consider these interests, concerns, and associated data in its decision-making process. Further, the EFSEC process is sufficiently thorough and detailed to insure that the conditions that must be attached to the site certification pursuant to RCW 80.50.100 are comparable and as stringent as would have been attached through the usual procedures (or the CZM regulatory "network" in the case of a CZM matter).

The Department of Ecology is afforded several opportunities by statute or regulation to insure that its coastal zone management interests are addressed by EFSEC.

First, throughout the EFSEC process, DOE is fully represented through membership on the council (RCW 80.50.030). Second, the Department of Ecology and the other state agencies represented on the council may automatically participate as a formal party throughout the contested case licensing proceedings* (WAC 463-30-050). When a CZM issue needs to be specifically addressed in the proceedings by EFSEC, the Department of Ecology could submit evidence either in oral or written form or both to the council. In developing its case on the CZM issue, the CZM staff of the Shorelands Division would involve the other appropriate state agencies by means of the state CZM managerial network. A further discussion of this "network" and the formal and informal interrelationships among agencies, the Department of Ecology offices, and individuals in administering the state's CZM program is provided beginning on page 124

---

* "The contested case proceedings shall be commenced on receipt of the application." (WAC 463-30-080)

of the state CZM program document. The managerial network is an important factor in assuring that the diverse state interests are adequately considered, in a coordinated fashion, in the planning of energy facilities and their impacts in the coastal zone.

Since the EFSEC process must follow the state's Administrative Procedures Act, evidence presented by the Department of Ecology and others is received in a trial setting, with witnesses being subject to cross-examination. This formal process insures objective and factual decison-making by EFSEC, as well as providing an incentive for the expert witness to be armed with the best available information. This, of course, underscores the value of the CZM network which would have been utilized in developing the CZM case to be presented by the Department of Ecology.

The substance of the CZM program is also addressed by EFSEC in a detailed manner through the council's environmental review of the project. The environmental guidelines which EFSEC follows are identical to the SEPA guidelines. As noted earlier, SEPA is nearly identical to NEPA. The council's environmental guidelines are adopted pursuant to Chapter 463-46 WAC.

Generally, EFSEC orders the draft EIS prior to the actual contested case hearing with the final EIS prepared subsequent to this hearing. Thus there is ample opportunity for the environmental ramifications of the proposed project (including CZM/SMA matters) to be thoroughly assessed by the council and the public throughout the contested case licensing proceedings.

A third significant mechanism for inserting CZM/SMA concerns into the EFSEC process is provided by the local government representative on EFSEC (as a voting member). The representative can submit local views and expertise (such as testimony on the shoreline master program) at the contested case hearing in a similar fashion as described for the Department of Ecology.

Federal agencies may also be authorized by EFSEC to participate in the proceedings, thus providing a mechanism for national CZM and other interests to be considered in a formal way. Such participation would be governed by the procedures and policies of EFSEC as set forth in Title 463 WAC, and specifically WAC 463-30-400 and WAC 463-30-410. These are provided below:

> "WAC 463-30-400 INTERVENTION. On timely application in writing to the Council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the Council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be

verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In Exercising discretion with regard to intervention, the Council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. [Order 109, § 463-30-400, filed 11/16/76.]

"WAC 463-30-410 PARTICIPATION BY INTERVENOR. In general, it is the policy of the Council to allow any intervenor broad procedural latitude. To the extent that the Council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and Counsel for the Environment to allowing the Counsel for the Environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the Counsel for the Environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The Council reserves the right to prescribe other limitations and conditions, where appropriate. It is the intent and purpose of this section to prevent unwarranted proliferation of issues leading, in turn, to delay and prejudice to existing parties. [Order 109, § 463-30-410, filed 11/16/76.]"

Finally, individual citizen concerns (including CZM/SMA interests) can be inserted formally into the process in several ways. First, individuals or representatives of special interest groups may make their concerns known at the public information meeting or at an initial public hearing held for the purpose of determining consistency with local land use plans and zoning ordinances (WAC 463-26-130). Second, individuals or groups may be granted "intervenor" status, thus becoming a formal party to the legal proceedings (WAC 463-30-060). Third, the public is represented by the counsel for the environment who is considered a formal party to the proceedings (described previously). Further opportunity for individual participation is provided by RCW 80.50.091(3) which provides:

"At such public hearing (the contested case hearing) any persons shall be entitled to be heard in support of or in opposition to the application for certification."

These various means of "public involvement" in the process are consistent with and supportive of the shoreline management and CZM program which stresses the ability and opportunity of citizens to appeal and contest proposed government actions and decisions.

IV. NATIONAL INTEREST CONSIDERATIONS

The CZM Act (Section 306(c)(8)) and its approval regulations (Section 923.52) require the state to adequately consider the national interest in the siting of facilities necessary to meet requirements which are of greater than local concern. The Washington CZM program and its related state network of policies and authorities establish a reasoned means to consider the siting of facilities of local as well as national import. The national interests considered and weighing of these interests were reflected in the preparation of the federally approved program document Washington State Coastal Zone Management Program, June 1976. Refer to pages 139-140 of the document for a fuller discussion of the consideration of national interests within the context of the WCZMP.

The 1976 amendments to subsection 306(c)(8) of the CZMA stress adequate consideration of the national interest in the planning for and siting of energy facilities in or significantly affecting a state's coastal zone. Therefore, it is appropriate to specifically address the various opportunities provided by the energy facility planning process to consider such national interests.

EFSEC is the primary means by which the state can legally enforce a commitment to consider national interests in the siting of energy facilities in the coastal zone. Given the extensive checks and balances of the EFSEC process, the preemptive powers of EFSEC to insure greater than local interests in the siting of energy facilities, the fact that federal agencies may intervene in the EFSEC proceedings, and the underlying legislative policy embodied in Chapter 80.50 RCW, EFSEC provides a formal, balanced, and objective means of adequately considering national interests in the siting of energy facilities within its purview.

The SMA is the primary vehicle available to insure adequate consideration of any possible national interests in the siting of energy facilities not within EFSEC's purview, such as hydroelectric generating plants, and OCS onshore support activities. As noted on page 140 of the WCZMP document, the SMA provides several ways to insure that the state program neither arbitrarily excludes nor unreasonably restricts the siting of facilities of greater than local interest. These include the open planning process establishing the shoreline program, the appeals process available through the Shorelines Hearings Board (one basis of appeal being failure to consider greater than local interests) and the recognition of the statewide over local interests with respect to shorelines of statewide significance. (Refer to page 40-43 in the WCZMP document and to Chapter 90.58.020 and 90.58.180 RCW.)

V. FEDERAL CONSISTENCY PROCEDURES FOR ENERGY FACILITIES SUBJECT TO CHAPTER 80.50 RCW

The Department of Ecology is designated the lead state agency for administration of the Washington CZMP pursuant to Section 306(c)(5) of the federal CZM, and as such "is responsible for . . . concurring

with or objecting to consistency certifications for federal licenses and permits " pursuant to federal regulations (15 CFR 930.18(b)). The only exception to this provision is allowed in a case in which the "306 agency" chooses to designate another single state agency to review all consistency certifications and determinations. Such delegation by a 306 agency, however, must be clearly described in the management program. In the absence of such a designation in the Washington program, the Department of Ecology is responsible for issuance of all consistency concurrences or objections, including those pertaining to energy facilities, in Washington.

The Washington State EFSEC statute states, however, "that any certification of a site shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards and political subdivisions, whether a member of the council or not, to the approval of the site and the construction and operation of the proposed energy facility" (RCW 80.50.120). Thus, under state law, and because the EFSEC review (including the participation of DOE) constitutes the major energy facility siting process for the purposes of the coastal program, DOE has no discretion to issue a consistency concurrence or objection that contradicts the decision of the Governor based upon EFSEC's substantive review. The limitation in the federal regulations (15 CFR 930.18(b)) that "only the designated state agency is authorized to comment officially on a federal consistency determination or concur with or object to a consistency certification," while requiring that DOE issue the consistency findings, does not require that DOE have the authority under state law to come to a conclusion independent of the existing state authorities. The sole criterion, therefore, for DOE's statement of concurrence or objection to a consistency certification or determination, would be the outcome of the EFSEC certification process. Conditions may be imposed by EFSEC as part of the certification and with gubernatorial concurrence, that would serve to assure that any certified site or facility is in substantial accord with the policies of the Washington Coastal Zone Management Program.

In order to assure that the Governor's site certification decision is available to the Department of Ecology at the time it reviews the consistency determination certification, evidence of site certification by the Governor of any energy facility subject to the provisions of the state's energy siting law (RCW 80.50) is defined as "information necessary to assess the consistency of federal license and permit activities" as that phrase is used in the relevant federal regulations (15 CFR 930.58 and 15 CFR 930.56(b)). No later than 15 days after the receipt of a complete consistency certification, the department will provide public notice of its intent to issue its consistency findings within 15 days. Public notice issued in association with contested case hearings in the EFSEC process will include notice that the process will lead to a finding that will be decisive in the consistency review mechanism of the state.

More detailed information on the state's administration of its consistency review procedures may be found in the state's guidance papers for federal consistency.

APPENDIX A

SHORELINE MANAGEMENT POLICIES

The following SMA policies, and relevant portions of local shoreline master programs at a minimum will be utilized by: 1) EFSEC in formulating "conditions designed to recognize the purpose of laws. . .or rules or regulations promulgated thereunder, that are preempted or superceded," pursuant to RCW 80.50.100, with respect to the siting of energy facilities within the jurisdiction of the SMA, in the Washington Coastal Zone; and, 2) federal agencies in meeting the federal consistency requirements of § 307 of the CZMA with respect to federal actions, or the issuance of federal licenses or permits related to energy facilities in the Washington Coastal Zone:

1. "RCW 90.58.020 Legislative findings -- State policy enunciated -- Use preference. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation.

   "It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

   "The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

   (1) Recognize and protect the state-wide interest over local interest;

   (2) Preserve the natural character of the shoreline;

   (3) Result in long-term over short-term benefit;

   (4) Protect the resources and ecology of the shoreline;

   (5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

"In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

"Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." (1971 ex.s. c 286 § 2.)

2. "RCW 90.58.160 - "prohibition against surface drilling for oil and gas, where. Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark." (1971 ex.s. c 286 § 16.)

3. "RCW 90.58.320 - "Height limitation respecting permits. No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served." (1971 ex.s. c 286 § 32.)

4. In addition, the following specific portions of the Shoreline Master Program(s) of the local government(s) within whose jurisdiction the energy facility is proposed are hereby incorporated by reference. Specific standards and criteria of each portion listed below are also hereby incorporated. The relevant section of the Final Guidelines (Chapter 173-16 WAC)

which provides authority and guidance to local governments in adopting Master Programs is shown in parenthesis.

a. Policy Statements (WAC 173-16-040(2))

b. Economic Development Element (WAC 173-16-040(3)(a))

c. Shoreline Use Element (WAC 173-16-040(3)(e))

d. Conservation Element (WAC 173-16-040(3)(f))

e. Environment Designations (WAC 173-16-040(4)) (for the area(s) affected by the proposed energy facility)

f. Provisions, standards, and criteria of the following use activities within the affected Master Program:

(1) Utilities (WAC 173-16-060(9))

(2) Ports and Water Related Industry (WAC 173-16-060(10))

(3) Bulkheads (WAC 173-16-060(11))

(4) Breakwaters (WAC 173-16-060(12))

(5) Jetties and Groins (WAC 173-16-060(13))

(6) Landfill (WAC 173-16-060(14))

(7) Dredging (WAC 173-16-060(16))

(8) Shoreline Protection (WAC 173-16-060(17))

(9) Piers (WAC 173-16-060(19))

APPENDIX B

OUTER CONTINENTAL SHELF MANAGEMENT CONSIDERATIONS IN THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

INTRODUCTION

The purpose of this appendix is to provide an overview of the state's major authorities in influencing the Outer Continental Shelf (OCS) development, state concerns and some perceived implications of OCS development for the state.

Following the passage of the 1976 Amendments to the Coastal Zone Management Act, it became the state's added responsibility to recognize explicitly the potential for Outer Continental Shelf (OCS) development and for related onshore and offshore impacts as they may affect the coastal zone. The management of the impacts of OCS development presents some problems because states have traditionally exerted virtually no control beyond the three-mile limit and because the offshore activities imply significant impacts - environmental, economic, and institutional. Planning for such impacts is alone an enormous task; in the case of OCS development, planning is further complicated by the lack of direct control over the offshore activities. From this perspective, OCS development is threatening to the state's interests. The CZMA has reduced this threat in some measure by allocating resources to the coastal states to develop and implement management tools for the protection and development of the coastal zone resources. The 1976 amendments have further encouraged the explicit recognition by the state of its interests in the OCS; whether or not development will soon occur. Additional grants are available through the Coastal Energy Impact Fund to plan for the impacts of all forms of energy-related facilities affecting the coastal zone.

To date, Washington State has had little experience with oil-related development. The potential for OCS development has been a peripheral concern, while state policy-making has been concentrated on the more timely prospects of receiving Alaska's non-OCS oil. Comparable concerns are likely to arise as a result of either Alaska or Washington State OCS production, but will be delayed for an unknown period of time.

I. LEGAL CONSIDERATIONS

The question of who has legal rights and responsibilities in the 3- to 200-mile portion of OCS and therefore control over development, drilling, mining, and transportation, has two dimensions. First, there is the question of the rights of the United States versus other nations; and second, there is the question of the rights of the United States versus each coastal state.

Under international law, the United States has principal legal rights, responsibilities, and ownership over the mineral resources in the 3- to 200-mile portion of the OCS. Additionally, the United States has claimed the right to regulate certain portions of the

fisheries resource in the 3- to 200-mile portion of the OCS. Navigation through this sector is guaranteed for all nations under international law.

Regarding federal/state control of the OCS, the federal government has clear priority. States own and control the seabed within the three-mile limit, subject to the rights of the federal government to regulate for purposes of commerce, navigation, national defense, and international affairs. Outside the three-mile limit, the federal government has exclusive ownership and regulatory rights vis-a-vis the states. The states have no claim of ownership to the seabed or minerals therein beyond the three-mile limit, and have only very limited regulatory powers in that area. The only exceptions are Texas and Florida which own the seabed to three leagues or nine miles.

The federal government has adopted a number of regulatory programs affecting the OCS. Certain programs give states a limited role in influencing activities which occur beyond the three-mile limit. This role is limited however, and there is much conflict between the states and the federal government regarding the timing, location and extent of development of the OCS. The federal government controls development of the OCS, and reaps the economic dividends resulting from such development, while coastal states suffer the environmental and adverse economic impacts of development beyond the three-mile limit. This situation has resulted in substantial conflict between states and the federal government which has not been completely resolved.

The State of Washington has the same limited legal rights and responsibilities beyond the three-mile limit as do the other coastal states. Washington can attempt to influence certain aspects of OCS development indirectly, however, through its coastal zone plan, policies regarding deepwater ports, its implementation plan for the Clean Air Act and Clean Water Act, and other such approaches.

Proposals are presently before Congress to give states a somewhat larger role in influencing OCS development.

The sea is divided into at least three separate areas. First, there is the territorial sea within which nations exercise almost total sovereignty as an extension of their powers over land. The United States has a three-mile territorial sea. Second, there is a contiguous zone extending no more than 12 miles off shore within which nations have certain rights, but less than in their territorial sea. Third, there are the high seas situated beyond the territorial sea and contiguous zone.

The term "continental shelf" has different legal and geologic definitions. To a geologist, the continental shelf starts with the upland coastal plains and extends seaward to the edge of the continental slope, which generally is located at a depth of 200 meters (656 feet). Under international law, the continental shelf begins at the seaward limit of the territorial sea at least three miles

from the low water mark of the coastline and extends to a depth of 200 meters, and possibly further if the area in question can be exploited technologically. U.S. law utilizes the broader international definition and applies its law to the "outer continental shelf," as all submerged lands lying seaward and outside of state-owned lands. Both the international and federal definitions include areas known to the geologists as the continental slope, continental rise, and continental borderlands, rather than the continental shelf.[1] The term Outer Continental Shelf (OCS) is used herein, as it is used in U.S. law.

II. STATES' RIGHTS AND INTERESTS IN THE OCS

A. RIGHTS

State ownership rights end at the three-mile limit, beyond which the federal government has exclusive ownership rights of the minerals and the seabed. OCS development is a proprietary function of the federal government. The federal government receives significant revenue from OCS oil and gas lease sales and cash bonus bids (approximately $8 billion in 1976) which do not accrue to the states.[2]

States whose waters abut the OCS absorb significant costs imposed by OCS development without receiving direct revenue from the development. The secondary economic impact of OCS development and related oil processing facilities in coastal areas impose numerous costs on states.

Additional support facilities and services and social infrastructure must be provided and paid for by the states. The costs of providing the infrastructure can be significant and are sometimes not compensated for by increase in tax revenue. Environmental costs related to OCS development can be high. Air, water, and visual pollution problems resulting from refineries, tank farms, and OCS development can have significant affect on the coastal states and the potential for the massive oil pollution of the nation's beaches and coastal waters is a major fear. It should be noted, however, that states do receive funds from the Land and Water Conservation Fund, of which substantial percentages are obtained from receipts of OCS oil and gas royalties paid by the industry to the federal government.

---

[1] Krueger, Robert B., "The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act," 10 Natural Resources Journal, 442 (1970), p. 442.

[2] Breeden, Richard, "Federalism in the Development of the Outer Continental Shelf Minerals," 28 Stanford Law Review, 1107, July 1976, p. 1114.

The dispute between the federal and various state governments over offshore development has been long and bitter. Since the Supreme Court made it clear that the federal government owns the resources beyond the three-mile limit, the desire of states to affect OCS development has focused on their police power and proposed legislative changes.

States may impact OCS development either directly or indirectly. Their ability to directly impact OCS development is quite limited and results from either a specific right granted to states via federal legislation or the external application of state law into the OCS, as authorized by the Outer Continental Shelf Lands Act. Several ways in which the state may directly influence OCS development are described below.

Federal statutes specifically authorize the extension of state law beyond the three-mile limit or give states the right to directly affect activities beyond the three-mile limit. Several of these are:

1. The Outer Continental Shelf Lands Act

   The Outer Continental Shelf Lands Act provides that:

   (2) "...the civil and criminal laws of each adjacent state, now in effect or hereafter adopted, amended, or repealed, are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf, ... All of such applicable law shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer continental shelf.

   (3) The provisions of this section for adoption of state law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any state for any purpose over the seabed and subsoil of the outer continental shelf, or the property and natural resources thereof, or the revenues therefrom."[3]

[3] 43 USC, Section 1333.

Thus state civil and criminal laws apply "as the law of the United States" in the outer continental shelf on the subsoil and seabed, and to the artificial islands and fixed structures. State law is administered and enforced by U.S. officials and courts.

The scope of this section has received little scrutiny and has not been precisely determined. State law has been applied in the OCS most often in the personal injury area, to answer such questions such as the allowance of attorneys' fees,[4] to determine liability and amount of damages arising out of an explosion of a drilling platform,[5] to determine a statute of limitations,[6] and related legal issues.[7] State law was held not to include the air above the sea.[8] The Supreme Court rules that the outer continental shelf is an area of exclusive federal jurisdiction, and state law applies only where it is not inconsistent with applicable federal law; thus where there is a comprehensive body of federal law applicable to the outer continental shelf, state law is inconsistent and inapplicable.

Certain state environmental laws might extend to the OCS and impact OCS development under this section of the Outer Continental Shelf Lands Act. Both the Federal Water Pollution Control Act[9] and the Clean Air Act[10] allow state and local governments to impose air and water pollution standards stricter than those promulgated by the Federal Environmental Protection Agency.[11] Region IX of the EPA has concluded that approved state air and state water quality implementation plans may apply in the OCS beyond the three-mile limit.[12] California is considering attempting to use these provisions of federal law to

---

[4] Corrosion Reactifying Company vs. Freeport Sulphur Company, 197 F.Supp. 291 (D.C. Texas, 1961).

[5] Dickerson vs. Continental Oil Company, 449 F.2d 1209 (C.A. La., 1971).

[6] Chevron Oil Company vs. Husun, 404 U.S. 97 (1971).

[7] Guess vs. Read, 290 F.2d 622 (C.A. La., 1961).

[8] Chevron Oil Company vs. Husun, supra.

[9] 33 USC, Section 1370.

[10] 42 USC, Section 1857 (d-1).

[11] Hildreth, "The Coast," p. 285.

[12] EPA Regional Counsel Opinion No. 293, Region IX, September 15, 1975.

establish stringent air and water pollution control requirements for OCS development facilities beyond the three-mile limit for those facilities which would impact air or water quality within the three-mile limit. California would require federal lessees to go through the state permit procedures for new source discharges.[13]

The precise limits of this statutory extension of state law into the OCS are not clear. It does, however, offer significant potential for states to have additional impact on OCS activities.

2. Deep-Water Ports Act

The Deep-Water Port Act of 1974,[14] which authorizes the Secretary of Transportation to license deep-water ports more than three miles off shore, gives each significantly affected coastal state a veto over the license. States within 15 miles of the proposed port, directly connected by pipeline to it, and those with an equivalent risk of damage have a veto power. Thus Washington can play a determinative role in deciding whether or not deep-water ports should locate off the coast of Washington beyond the three-mile limit.

3. Port and Waterway Safety Act

The Port and Waterway Safety Act[15] may provide some flexibility for states to impose safety regulations for offshore facilities.

> "Nothing contained in this chapter ... (shall) prevent a state or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be prescribed pursuant to this chapter."[16]

The Act applies to the "navigable waters of the United States." This provision is restricted to safety standards or equipment requirements for structures and does not apply to vessels.

---

[13] Calfee, David, California Office of Planning and Research, Office of the Governor, personal conversation; OCS Task Force, Governor's Office of Planning and Research, California, Offshore Oil and Gas Development Draft Findings and Recommendations, February 1977.

[14] 33 USC, Section 1501, et seq.

[15] 33 USC, Section 1221, et seq.

[16] 33 USC, Section 1222(b).

4. Coastal Zone Management Act

The state is able to influence OCS activities directly through the federal consistency requirements of the Coastal Zone Management Act. Exploration and development plans must be prepared for the federal agencies by the lessees prior to commencing drilling to detail operating conditions. These plans are to contain a certification that they are consistent with the state's Coastal Zone Management Program. The state concurs or is presumed by the Secretary of Commerce to concur after a period of time. If the state should not concur, the lessee must amend the plan. Alternatively, the secretary can determine that the plan is consistent with the provisions of the Act, or that the activities are required in the national interest. If the state concurs, no further certification is required for specific licenses or permits included within the scope of the plan; otherwise, the state must concur as application is made for each license or permit. While a "blanket" certification for the exploration or development plan would allow the state to judge the overall affects of the OCS activities, rather than specific components, it may be that sufficiently accurate and detailed information would be unavailable in the early stages of the development. Presumably, the state can concur with portions of the plan for which adequate documentation is provided and withhold concurrence for other permits or licenses until information is available to evaluate the proposed activity.

For further information regarding state CZM involvement in the OCS leasing process the reader should refer to: NOAA regulations coded 15 CFR Part 930, Subpart E, "Federal Consistency with Approved Coastal Management Programs," which appeared in the March 13, 1978 Federal Register, and Department of Interior regulations coded 30 CFR Part 250.34, "Outer Continental Shelf," which appeared in the January 27, 1978 Federal Register.

Also, during the development phase, state and local permits for onshore construction activities and for pipeline easements through the three miles of coastal waters will be necessary. This permitting process may be the most direct leverage which the state has to influence the final configuration of activities. If the state has designated critical resource areas offshore and local governments have determined priorities for use onshore, pipeline routes to shore can be planned to avoid the sensitive areas as much as possible, and to land oil in acceptable shoreline areas: the issue of onshore construction permits - for example, for processing facilities, can also be made contingent on transportation modes and routes, both on and offshore.

B. STATE INTERESTS & CONCERNS

OCS development could have both economic and environmental impacts on Washington State. Both kinds of impacts are serious enough to be of significant concern.

Environmental concerns include oil spills and discharges, and air, noise, and water pollution which could result from exploitation of minerals in the OCS, transportation of oil through the OCS, or the location of oil transfer stations in Washington for Alaskan oil. The federal government admits that sooner or later a major oil spill will occur.[17] From 1953 to 1972, when nearly all wells in the OCS were drilled, 43 major accidents occurred.[18] The State of Washington owns and administers most of the Pacific beaches as a seashore conservation area.[19] Oil spills impose cleanup costs as well as social and economic impacts on coastal lands. Tourism and land values decline, reducing local government tax bases. The 1969 Santa Barbara oil spill caused a loss to the city of approximately $3.6 million from tourist revenue, and $2.5 to $3.2 million was lost through diminution of land value, principally parks owned by the city. California lost approximately $3.8 to $5.2 million in use values of state parks and beaches.[20] Recreational and tourist use of seashore areas would be directly affected by a major oil spill.

OCS development, or a major oil spill, could affect fisheries and other valuable marine resources. Marine organisms, shellfish, fish, marine and shore birds, and marine mammals are found in the coastal environment.

Bays and estuaries serve important functions as breeding grounds for fish and shellfish. Commercial and sport fisheries are important sources of recreation and revenue for coastal states in general, and in particular, the State of Washington. Platforms, pipelines, and OCS boat and barge traffic can conflict with fishing operations, and water pollution can adversely affect spawning and feeding grounds.[21] The economic impact of OCS development can be significant.[22] The development of oil resources in Alaska could also hve a substantial economic impact on the State of Washington.

---

[17] Breeden, Op. Cit. p. 1108.

[18] Hildreth, "The Coast," p. 259.

[19] RCW 43.51.650.

[20] Hildreth, "The Coast," p. 259, 260.

[21] Id., p. 260.

[22] See A.D. Little, Coastal and Onshore Impacts of Alaskan Petroleum Development, prepared for the Department of Ecology, June 1977.

Onshore impacts can be primary or secondary. Primary impacts refer to the use of resources and to the activities required to develop and produce the minerals in the outer continental shelf. These could include harbor dredging and wharf construction for vessels, transportation of supplies and equipment to rigs, construction and operation of pipelines, refineries, gas processing plants, and storage and transfer facilities.[23] Secondary impacts include the private and public infrastructure necessary to accommodate the people and activities drawn to an area to supply and service OCS development. Rapid population growth is ordinarily demanded by the labor intensive nature of construction work. Additional public services such as transportation, sewers, water, health services, fire and police protection, etc. are all predictable needs resulting from the onshore impact of OCS development. Generally, advantages of oil and gas development accrue to a larger region while economic disadvantages are localized in the vicinity of the development.[24] Furthermore, OCS-related onshore activities may occur where there is already intense competition for land. This places additional strains on shore facilities and competing land uses.[25]

Offshore oil development raises questions of conflicting ocean uses. Commercial fishing, shellfish, and other marine life are significant economic resources of the state likely to be impacted by OCS development. The siting of rigs and pipeline would be important because of stability and sediment problems in certain areas offshore as well as the location of earthquake activity.

The onshore impact of OCS development is also a significant concern. Recreation and tourism on ocean beaches are important economic factors. Planning for onshore facilities must account for wetlands, beaches and dunes, wildlife habitat, and historic areas. The social and economic impact of planning and accommodating shore activities for OCS construction and additional refineries and petrochemical complexes would be significant.

III. IMPLICATIONS OF OCS DEVELOPMENT

Two sets of OCS activities will be addressed here: Alaskan OCS activity and Washington OCS activity. These two operations will not necessarily affect Washington's coastal zone and its management in the same way. Several distinctions can be made.

---

[23] Hildreth, "The Coast," p. 261.

[24] Id., p. 262.

[25] Id.

A. TIMING AND PROBABILITY

OCS lease schedules were predicated primarily on the industry's interest and its assessment of potential resources in the OCS structures. Some weight was also attached to the environmental resources whose quality might be risked during such development. The Washington-Oregon offshore areas were considered by the industry to have less economic potential for petroleum development than any of the other areas proposed for leasing.[26]

Areas off Alaska, by contrast, were judged to hold greater potential for sizable discoveries and, of course, tracts within the Gulf of Alaska have already been leased, with exploration underway. Thus impacts as a result of Alaska OCS activity can be considered more imminent and less uncertain than those to occur as a result of OCS activity off Washington.

B. POTENTIAL IMPACTS

Should development occur on the shelf off Washington, the range of onshore or nearshore impacts - environmental, economic, social, fiscal, institutional - which would accompany the activities, would be much greater than those resulting from Alaskan development. Many of the potential impacts to the land and water resources of the coastal zone are related to the onshore supply bases, transportation, and processing facilities and their construction, required in some proximity to the offshore exploration, development, and production of oil and gas resources. Obviously, some of these activities cannot be located in Washington to serve efforts in Alaska. However, Washington can be expected to supply both labor and transportation services to Alaska development.

C. LOCATION OF IMPACTS

Development off Washington's coast is more likely to impact the smaller, more isolated communities found along the Pacific Coast. The severity of impacts - in terms of the dislocation of existing economic and social patterns among current residents - is generally increased the less urbanized the area is and the more limited its economic base. OCS-related activities, as a result of development in Alaska, are less likely to occur in such remote areas because the same constraints of limited infrastructure, labor, industrial land, etc. are found in these areas as are found in Alaska's coastal communities.

Thus, Alaska-induced activities can more likely be expected to take place in urbanized and industrialized areas; i.e.,

---

[26] Englander, E., and J. Feldmann, Petroleum Development on the U.S. Outer Continental Shelf: Policy Options in Leasing and Federal-State Relationships, (Preliminary Report), January 1976 (Seattle, University of Washington Program in Social Management of Technology).

within the sound, which are more capable of absorbing the incremental employment, population, and associated impacts.

D. INTERSTATE COORDINATION

The necessity for coordination of planning efforts between states differs in these two cases. Activities off Washington's coast can reasonably be expected to affect Oregon economically and/or environmentally. This is more likely if the port facilities of Portland or Astoria are used to support the OCS activities and especially if discovered pools cross over the state's boundary.

In addition to the above issues, development of the OCS off Washington requires that the state participate actively in the preleasing process conducted by the Bureau of Land Management and assume positively its regulatory function over the exploration, development, and production phases through the CZMA federal consistency provisions. In a number of respects, the prelease phase is most critical to protection of a state's interests: by removing from consideration those tracts which impose a significant threat of damage to important resources, the state avoids the potential for losses or damages to its interests. Information generated by the industry and essential to the state's evaluation is often considered proprietary and is guarded by the USGS. State and local government input is not sought until the Call for Nominations and Comments is made. At this time, specific tracts within the proposed lease sale areas may be designated as areas of particular environmental significance; e.g., breeding or fishing grounds. Tracts to be placed for bid are selected on the basis of potential productivity, hazard, and resources compatibility; representatives of the state(s) adjacent to the proposed lease are participants in the selection process. The states, however, do not participate in drafting the EIS though state and local government agencies do review the document. No less than 30 days is allowed between submission of the final EIS and a determination of whether or not to hold the sale. If the decision is to hold the sale, final selection of tracts is made, lease stipulations determined, and a notice of sale published.

The magnitude of impacts likely to occur as a result of leasing in areas which impose more acceptable risks (or which are leased despite the state's objections) can be limited by the careful choice of lease stipulations.

For the proposed leasing of Lower Cook Inlet tracts, for example, stipulations were to have been made to the effect that: (1) barging of products was to be prohibited except in cases of emergency; and, (2) the use of boats and aircraft was to be restricted in the summer months to protect major sea bird colonies and marine mammal rookeries. In addition, before any exploration plan was to be approved by the USGS, lessees were to be required to submit information about activities to support exploratory operation.[27]

---

[27] Mills, B., "Cook Inlet Lease Sale is on Feb. 23," Anchorage Daily News, Anchorage, Alaska, January 17, 1977.

ATTACHMENT

OFFICE OF THE ATTORNEY GENERAL
SLADE GORTON ATTORNEY GENERAL
TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98504

OFFICES AND OFFICERS--STATE--ENERGY FACILITY SITE EVALUATION COUNCIL--GOVERNOR--CERTIFICATION OF ENERGY FACILITY SITES--PREEMPTION OF LOCAL ZONING CODES.

The certification by the governor of designated energy facilities under chapter 80.50 RCW will have the effect of permitting the construction and operation of the facilities thus certified at whatever location is specified therein even where the otherwise applicable provisions of a county, city or regional zoning code are to the contrary in view of the preemptive language of RCW 80.50.110, as amended by § 37, chapter 108, Laws of 1975-76, 2nd Ex. Sess.

- - - - - - - - - - -

January 5, 1977

Honorable Keith Sherman
Chairman, Energy Facility
Site Evaluation Council
820 East Fifth Avenue
Olympia, Washington 98504

Cite as:
AGO 1977 No. 1

Dear Sir:

By letter previously acknowledged you have requested our opinion on a question which we paraphrase as follows:

Will a certification, approved by the governor under chapter 80.50 RCW, have the effect of permitting the construction and operation of designated thermal power plant other energy facilities at whatever location is specified therein even where the otherwise applicable provisions of a county, city or regional zoning code are to the contrary?

We answer the foregoing question in the affirmative for the reasons set forth in our analysis.

ANALYSIS

Chapter 80.50 RCW codifies the provisions of chapter 45, Laws of 1970, Ex. Sess., commonly known as the Thermal Power Plant Siting Act, together with certain later amendments and additions thereto. Principal among the later amendments are

those contained in chapter 108, Laws of 1975-76, 2nd Ex. Sess., by which the basic thrust of the earlier law was extended to encompass the siting not only of thermal power plants but of other energy facilities as well.[1] Accordingly, as thus amended the law currently provides for the certification of any such facilities in this state by the governor after receiving the recommendation of what is now denominated the Energy Facility Site Evaluation Council (EFSEC). "Certification" is defined by RCW 80.50-.020(5) to mean:

> ". . . a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.050 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility:"

Insofar as other state agencies are concerned the effect of certification is spelled out in RCW 80.50.120 as follows:

> "(1) Subject to the conditions set forth

---

1 As defined in RCW 80.50.010(17) the term "energy plant" means:

> ". . . the following facilities together with their associated facilities:
>
> "(a) Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;
>
> "(b) Facilities which will result in receipt of liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;
>
> "(c) Facilities which will result in the receipt of more than an average of fifty thousand barrels per day of crude or refined petroleum which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;
>
> "(d) Any underground reservoir for receipt and

> therein any certification signed by the governor shall bind the state and each of its departments, agencies, divisions, bureaus, commissions or boards of this state whether a member of the council or not as to the approval of the site and the construction and operation of the proposed energy facility.
>
> "(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.
>
> "(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission or board of this state whether a member of the council or not."

See, AGO 1975 No. 10, copy enclosed. With regard to local units of government, however, a somewhat different approach was taken under the original, 1970, version of the law with respect to local controls. While § 11 thereof (later codified as RCW 80.50.110) provided, in subsection (2), that,

> "(2) The state hereby preempts the regulation and certification of thermal power plant sites and thermal power plants as defined in section 2 of this act."

In addition, an earlier section (11) of the 1970 act (now RCW 80.50.090) read in pertinent part, as follows:

> "(1) The council shall conduct a public hearing in the county of the proposed site within sixty days of receipt of an application for site certification: Provided, That

---

1 Cont'd:

> storage of natural gas as defined in RCW 80.40-.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and
>
> "(e) Facilities which will result in the processing of more than twenty-five thousand barrels per day of petroleum into refined products."

> the place of such public hearing shall be as close as practical to the proposed site.
>
> "(2) The council must determine at the initial public hearing whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site."

Thus, notwithstanding the original preemptive language of § 11, supra, this latter provision evidenced an apparent legislative intent to preclude the siting council from recommending - for certification by the governor - a thermal power plant site which was not consistent with the provisions of the local zoning code or land use plan covering the site in question. Accord, the following colloquy reported at page 281 of the 1970 Senate Journal between Senators Gissberg and McCormack, the latter being one of the original sponsors of the thermal power plant siting act:

> "Senator Gissberg: 'Will Senator McCormack yield? Senator McCormack, my inquiry has to do with following up the question of the site being in compliance with the county or regional land use plan or zoning ordinances. Let us assume that the proposed site is not consistent with the county land use plan. Under those circumstances then, is the council divested of authority to recommend that site as the site of the thermal power plant?'
>
> "Senator McCormack: 'Definitely yes.'
>
> "Senator Gissberg: 'It nowhere says that in the bill but that is the intention. Is that correct?'
>
> "Senator McCormack: 'Yes, that is certainly the intention. I think it is implied in the first sentence, Senator Gissberg.'"

Also to be noted is an immediately ensuing colloquy between Senators Mardesich and McCormack which is reported in the same Journal as follows:

> "Senator Mardesich: 'Will Senator McCormack yield? On the same line a question occurred to me. Well and good if the council decides that this did conform but what if some private citizen questions whether the land is properly zoned? There is actual zoning to accommodate this. In what situation are you then? You cannot preclude that individual certainly from . . . .'
>
> "Senator McCormack: 'There is nothing in this act that precludes any individual or even any political subdivision of the state from going to court to restrain the council from action. Any individual can take legal action against the council at any time.'"

This same theme, moreover, was continued in effect by the 1974 legislature which enacted what is now RCW 80.50.175. That statute, originating as § 2, chapter 110, Laws of 1974, Ex. Sess., empowered the siting council to conduct studies of potential thermal power plant sites prior to receipt of a specific application for site certification. Subsection (7) of the statute, however, disclaimed any intent by the legislature to preclude a county or city from also ". . . requiring any information it deems appropriate to make a decision approving a particular location." (Emphasis supplied.) Thus, the 1974 legislature still manifested an understanding that insofar as the relationship between site certification and local land use regulations were concerned, the county or city in which a thermal power plant was to be situated would have a legally enforceable voice (through its land use or zoning ordinances) with respect to the actual location of any such facility.[2]

---

2 Again, this reading of the intent of the legislature is also supported by dialogue reported in the Senate Journal - this time on p. 593 of the 1974 Journal where the following colloquy between Senators Washington and Bailey appears:

> "Senator Bailey: 'The question I have has to do with the amendment. Do the amendments in any way change the present powers of the local county commissioners to approve or disapprove the sites?'

During its most recent 1976 session, however, the legislature (also as a part of chapter 108, supra) adopted an amendment to RCW 80.50.110(2), the preemption statute quoted earlier, which, basically, has given rise to your present opinion request. By § 37 of chapter 108, supra, the legislature amended that statute to read as follows - set forth in bill form for ease of comprehension:

> "(2) The state hereby preempts the regulation and certification of ((~~thermal-power plant-sites-and-thermal-power-plants-as defined-in-RCW-80.50.020~~)) the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended."

The problem is that, at the same time, the legislature retained both § 9, chapter 45, Laws of 1970, Ex. Sess., (RCW 80.50.090) and subsection (7) of § 2, chapter 110, Laws of 1974, Ex. Sess., (RCW 80.50.175(7)); i.e., it neither repealed nor amended either of those prior statutes. Thus, on the one hand, what exists at the present time is an

---

2 Cont'd:

> "Senator Washington: 'No, these amendments do not. However, you may want that same question on the bill.'
>
> "Senator Bailey: 'I may want that back in the record on final passage.'
>
> ". . .
>
> "The President [then] declared the question before the Senate to be the roll call on final passage . . .
>
> "Senator Bailey: 'Mr. President, a question of Senator Washington. Again, does this bill in any way change the present power of the local board of county commissioners to approve or disapprove a site?'
>
> "Senator Washington: 'No, it does not. They have to approve the site before the siting council can take any action.'
>
> ". . ."

amended preemption statute which, when read in isolation, appears clearly to evidence an intent by the legislature to have the state preempt, among other things, the regulation and certification of the location of energy facilities - meaning, apparently, a preemption of the location of such facilities from any further local governmental land use controls. Yet within the same law another section (RCW 80.50.090) continues to require a determination by the council, after a hearing, on the question of whether a proposed energy facility will, or will not, be ". . . consistent and in compliance with county or regional land use plans or zoning ordinances" - and then to say that:

> ". . . If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site."

And, likewise, there also still exists, as a part of the law, RCW 80.50.175(7), supra, which, in referring to studies of potential sites by the state council, disclaims any intention of,

> ". . . preventing a city or county from requiring any information it seems appropriate to make a decision approving a particular location."

In short, what we now have is a law passed by a legislature (the 1976 session) which appears to have had a state preemption of local control over the actual location of energy facilities in mind (as evidenced by § 37, chapter 108, supra) but which, nevertheless, failed to remove from the prior law certain provisions which are obviously more consistent with the concept of local control (or veto, if you will) than with state preemption as to the actual location of thermal or other energy facilities.

How, then, is the question which you have directed to us by your present opinion request properly to be answered? In the final analysis, of course, only the courts of our state can definitively respond to that question in the course of actual litigation. And, so long as the provisions of RCW 80.50.090(2), supra, and RCW 80.50.175(7), supra, remain a part of the law it is possible that, based thereon, a negative answer (i.e., no state preemption as to the location of energy facilities) may thus be given. Nevertheless, while acknowledging that possibility our own considered opinion on the question is to the contrary.

In terms of what the 1976 legislature did or did not do it can hardly be doubted that the single most significant and meaningful indication of legislative intent with regard to the preemption question is that which is to be found in the amended version of RCW 80.50.110(2), the original preemption statute. Repeated both for emphasis and for ease of immediate reference, that statute now reads as follows:

> "(2) The state hereby preempts the regulation and certification of ((~~thermal power plant sites and thermal power plants as defined in RCW 80.50.020~~)) the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended."

Clearly the legislature which enacted this amendatory provision must be deemed to have intended to change the law. As observed in Home Indem. Co. v. McClellan Motors, 77 Wn. 2d 1, 459 P. 2d 389 (1969), at p. 3:

> ". . . It is a well recognized rule of statutory construction that, where a law is amended and a material change is made in the wording, it is presumed that the legislature intended a change in the law. E.g., Alexander v. Highfill, 18 Wn.2d 733, 140 P. 2d 277 (1943). . . ."

Likewise, it is to be presumed that the legislature in passing the amendment did not deliberately engage in an unnecessary or meaningless act. As stated in Kelleher v. Ephrata School Dist., 56 Wn. 2d 866, 873, 355 P. 2d 989 (1960):

> ". . . The courts will presume that the legislature does not indulge in vain and useless acts and that some significant purpose or object is implicit in every legislative enactment. Guinness v. State (1952), 40 Wn. (2d) 677, 246 P. (2d) 433."

It is true, of course, that this particular amendment also reflects the legislature's extension of the overall provisions of the siting act to cover energy plant facilities as well as thermal power plants. Thus, to that extent, the amendment would have some meaning even without its further thrust - a state preemption of the location (inter alia) of all such facilities. But, likewise, it is equally

evident, nonetheless, that this latter expansion of the scope of the original preemption statute (RCW 80.50-.110(2), supra) would be rendered meaningless if the legislature's at least arguably inadvertent retention of RCW 80.50.090(2) and RCW 80.50.175(2) were allowed to prevail over its obviously intentional action in this amending that statute - contrary to both of the above described principles of statutory construction. While both this office and the courts, in construing acts of the legislature, would certainly prefer a more perfect job than typically is done, we cannot insist on such perfection as a minimal criterion of accomplishment.

Therefore, our direct answer to your question, as above paraphrased, is in the affirmative. A certification, approved by the governor under chapter 80.50 RCW, as amended, will have the effect of permitting the construction and operation of designated energy facilities at whatever location is specified therein even where the otherwise applicable provisions of a county, city or regional zoning code are to the contrary.

By having so answered your question, however, we do not mean to say that the siting council is no longer required, in the course of its proceedings, to make a determination of whether or not a proposed site is ". . . consistent and in compliance with county or regional land use plans or zoning ordinances. . ." Accord, RCW 80.50.090, supra. So long as that statute remains in effect such a determination will still be required and, along with other relevant factors, it will still be a factor to be weighed and considered both by the council in making its recommendation and by the governor in making his decision. But because of the 1976 amendment to the preemption statute, RCW 80.50.110, a finding of inconsistency will no longer by itself bar the council from recommending the site in question to the governor for ultimate certification - or, by the same token, bar the governor from issuing the certification as recommended.

We trust that the foregoing will be of some assistance to you.

Very truly yours,

SLADE GORTON
Attorney General

PHILIP H. AUSTIN
Deputy Attorney General

THOMAS F. CARR
Assistant Attorney General

Enc.

Chapter 80.50 RCW
ENERGY FACILITIES——SITE LOCATIONS

Sections

80.50.010 Legislative finding——Policy——Intent.
80.50.020 Definitions.
80.50.030 Energy facility site evaluation council——Created——Membership.
80.50.040 Energy facility site evaluation council——Powers enumerated.
80.50.060 Energy facilities to which chapter applies——Applications for certification——Forms——Information.
80.50.071 Council to receive applications——Fees or charges for application processing or certification monitoring.
80.50.075 Expedited processing of applications.
80.50.080 Counsel for the environment.
80.50.090 Public hearings.
80.50.100 Recommendations to governor——Approval or rejection of certification——Reconsideration.
80.50.110 Chapter governs and supersedes other law or regulations——Preemption of regulation and certification by state.
80.50.120 Effect of certification.
80.50.130 Revocation or suspension of certification——Grounds.
80.50.140 Review.
80.50.150 Enforcement of compliance.
80.50.160 Availability of information.
80.50.175 Study of potential sites——Fee——Disposition of payments.
80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030.
80.50.190 Disposition of receipts from applicants.
80.50.800 Rules of thermal plant site evaluation council to continue until amended or rescinded.
80.50.900 Severability——1970 ex.s. c 45.
80.50.901 Severability——1974 ex.s. c 110.
80.50.902 Severability——1977 1st ex.s. c 371.

Energy supply emergencies: Chapter 43.21G RCW.

State energy office: Chapter 43.21F RCW.

Water pollution control, thermal power plants, permits, etc., duties of thermal power plant site evaluation council: RCW 90.48.262.

RCW 80.50.010 Legislative finding——Policy——Intent. The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost. [1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

Nuclear energy development: RCW 43.31.280–43.31.320.

Nuclear power facilities, joint operation: Chapter 54.44 RCW.

State energy office: Chapter 43.21F RCW.

Western interstate nuclear compact: RCW 43.31.400–43.31.420.

RCW 80.50.020 Definitions. (1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter;

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires;

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized;

(4) "Site" means any proposed or approved location of an energy facility;

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility;

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection,

maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid: *Provided*, That common carrier railroads or motor vehicles shall not be included;

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission;

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies;

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities;

(10) "Energy facility" means an energy plant or transmission facilities: *Provided*, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense;

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030;

(12) "Counsel for environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080;

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars;

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;

(b) Facilities which will have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products;

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW;

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution. [1977 1st ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.030 Energy facility site evaluation council——Created——Membership. (1) There is hereby created and established the "energy facility site evaluation council".

(2) The chairman of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor and shall be removable for cause. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The salary of the chairman shall be determined pursuant to the provisions of RCW 43.03.040. The chairman shall be deemed a "state employee" for the purposes of chapter 42.18 RCW.

(3) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions and committees or their statutory successors:

(a) Department of ecology
(b) Department of fisheries
(c) Department of game
(d) Department of parks and recreation
(e) Department of social and health services
(f) State energy office
(g) Department of commerce and economic development
(h) Utilities and transportation commission
(i) Office of program planning and fiscal management
(j) Department of natural resources
(k) Planning and community affairs agency
(l) Department of emergency services
(m) Department of agriculture
(n) Department of highways.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting

member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he represents and such member or designee shall serve until there has been a final acceptance or rejection of such proposed site;

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he represents and such member or designee shall serve until there has been a final acceptance or rejection of such proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he represents and such member or designee shall serve until there has been a final acceptance or rejection of such proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person. [1977 1st ex.s. c 371 § 3; 1975–'76 2nd ex.s. c 108 § 31; 1974 ex.s. c 171 § 46; 1970 ex.s. c 45 § 3.]

Reviser's note: (1) "office of program planning and fiscal management" redesignated as "office of financial management" by 1977 1st ex.s. c 114. See RCW 43.41.035.

(2) "department of highways" redesignated as "department of transportation" by 1977 1st ex.s. c 151. See RCW 47.04.015.

Severability——Effective date——1975–'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.040 Energy facility site evaluation council——Powers enumerated. The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.04 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To appoint an executive secretary to serve at the pleasure of the council;

(3) To appoint and prescribe the duties of such clerks, employees and agents as may be necessary to carry out the provisions of this chapter: *Provided*, That such persons shall be employed pursuant to the provisions of chapter 41.06 RCW;

(4) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(5) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.04 RCW;

(6) To prescribe the form, content, and necessary supporting documentation for site certification;

(7) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(8) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(9) To conduct hearings on the proposed location of the energy facilities;

(10) To prepare written reports to the governor which shall include: (a) a statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(11) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification: *Provided*, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: *Provided further*, That the council shall retain authority for determining compliance relative to monitoring;

(12) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication; and

(13) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington. [1977 1st ex.s. c 371 § 4; 1975–'76 2nd ex.s. c 108 § 32; 1970 ex.s. c 45 § 4.]

Severability——Effective date——1975–'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.060 Energy facilities to which chapter applies——Applications for certification——Forms——Information. (1) The provisions of this chapter shall apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020(7) and *(17), as now or hereafter amended. No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and *(17), as now or hereafter amended.

(3) Applications for certification of energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

(4) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. [1977 1st ex.s. c 371 § 5; 1975-'76 2nd ex.s. c 108 § 34; 1970 ex.s. c 45 § 6.]

*Reviser's note: The reference to subsection (17) of RCW 80.50.020 appears to be erroneous. Subsection (14) was apparently intended.

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.071 Council to receive applications——Fees or charges for application processing or certification monitoring. (1) The council shall receive all applications for energy facility site certification. The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:

(a) A fee of twenty-five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council. The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: *Provided*, That said costs exceeding a total of the twenty-five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.

(b) Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council in processing the application. Such costs shall include, but are not limited to, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application.

Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.

The council shall submit to each applicant a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: *Provided*, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(c) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility.

Each certificate holder, within thirty days of execution of the site certification agreement, shall deposit twenty thousand dollars, or such other amount as may be specified by council rule, to cover costs provided for by subsection (1)(c) of this section. Reasonable and necessary costs of the council directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit.

The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: *Provided*, That if the actual, reasonable, and necessary expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(2) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(3) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder. [1977 1st ex.s. c 371 § 16.]

RCW 80.50.075 Expedited processing of applications. (1) Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

(a) The environmental impact of the proposed energy facility;

(b) The area potentially affected;

(c) The cost and magnitude of the proposed energy facility; and

(d) The degree to which the proposed energy facility represents a change in use of the proposed site

are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study, notwithstanding the provisions of RCW 80.50.071; nor

(b) Hold a contested case hearing under chapter 34.04 RCW on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section. [1977 1st ex.s. c 371 § 17.]

RCW 80.50.080 Counsel for the environment. After the council has received a site application, the attorney general shall appoint an assistant attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [1977 1st ex.s. c 371 § 6; 1970 ex.s. c 45 § 8.]

RCW 80.50.090 Public hearings. (1) The council shall conduct a public hearing in the county of the proposed site within sixty days of receipt of an application for site certification: *Provided,* That the place of such public hearing shall be as close as practical to the proposed site.

(2) The council must determine at the initial public hearing whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as a contested case under chapter 34.04 RCW, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter. [1970 ex.s. c 45 § 9.]

RCW 80.50.100 Recommendations to governor——Approval or rejection of certification——Reconsideration. (1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(a) Approve the application and execute the draft certification agreement; or

(b) Reject the application; or

(c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the contested case for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information. [1977 1st ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.110 Chapter governs and supersedes other law or regulations——Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational

conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended. [1975-'76 2nd ex.s. c 108 § 37; 1970 ex.s. c 45 § 11.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.120 Effect of certification. (1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not. [1977 1st ex.s. c 371 § 10; 1975-'76 2nd ex.s. c 108 § 38; 1970 ex.s. c 45 § 12.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.130 Revocation or suspension of certification——Grounds. Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For violation of the provisions of this chapter, regulations issued thereunder or order of the council. [1970 ex.s. c 45 § 13.]

RCW 80.50.140 Review. (1) The approval or rejection of an application for certification by the governor shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW. [1977 1st ex.s. c 371 § 11; 1970 ex.s. c 45 § 14.]

RCW 80.50.150 Enforcement of compliance. (1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter. The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter. The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: *Provided*, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Wilful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council.

(4) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person. [1977 1st ex.s. c 371 § 12; 1970 ex.s. c 45 § 15.]

RCW 80.50.160 Availability of information. The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter. [1970 ex.s. c 45 § 16.]

RCW 80.50.175 Study of potential sites——Fee——Disposition of payments. (1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: *Provided*, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.

(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.070, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location. [1977 1st ex.s. c 371 § 13; 1975-'76 2nd ex.s. c 108 § 40; 1974 ex.s. c 110 § 2.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030. Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW. [1977 1st ex.s. c 371 § 14.]

RCW 80.50.190 Disposition of receipts from applicants. The state general fund shall be credited with all receipts from applicants paid to the state pursuant to chapter 80.50 RCW. Such funds shall be used only by the council for the purposes set forth in chapter 80.50 RCW. All expenditures shall be authorized by law. [1977 1st ex.s. c 371 § 15.]

RCW 80.50.800 Rules of thermal plant site evaluation council to continue until amended or rescinded. All rules of the thermal power plant site evaluation council in effect on March 15, 1976 shall continue in full force and effect until amended or rescinded by the energy facility site evaluation council after March 15, 1976. [1975-'76 2nd ex.s. c 108 § 42.]

Severability——Effective date——1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.900 Severability——1970 ex.s. c 45. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1970 ex.s. c 45 § 17.]

RCW 80.50.901 Severability——1974 ex.s. c 110. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1974 ex.s. c 110 § 3.]

RCW 80.50.902 Severability——1977 1st ex.s. c 371. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 1st ex.s. c 371 § 20.]

(New) Effective 7-23-58

OIS-688:1

Chapter 463-28

PROCEDURE--STATE PREEMPTION

WAC

463-28-010 Purpose and scope.
463-28-020 Authority of council--Preemption by state.
463-28-030 Determination of noncompliance--Procedures.
463-28-040 Inability to resolve noncompliance.
463-28-050 Failure to request preemption.
463-28-060 Request for preemption--Contested case.
463-28-070 Certification--Conditions--State/local interests.
463-28-080 Preemption--Failure to justify.
463-28-090 Governing rules.

NEW SECTION

WAC 463-28-010 PURPOSE AND SCOPE. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt local land use plans or zoning ordinances for a site or portions of a site for an energy facility.

NEW SECTION

WAC 463-28-020 AUTHORITY OF COUNCIL—PREEMPTION BY STATE. The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of energy facilities.

NEW SECTION

WAC 463-28-030 DETERMINATION OF NONCOMPLIANCE--PROCEDURES. If the council determines during the hearing required by RCW 80.50.090 that the site of a proposed energy facility or any portion of a site is not consistent and in compliance with existing land use plans or zoning ordinances in effect at the date of the application, the following procedures shall be observed:

(1) As a condition necessary to continue processing the application, it shall be the responsibility of the applicant to make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance.

(2) All council proceedings on the application for certification may be stayed at the request of the applicant during the period when the plea for resolution of noncompliance is being processed by local authorities.

(3) The applicant shall submit regular reports to the council regarding the status of negotiations with local authorities on noncompliance issues.

NEW SECTION

WAC 463-28-040 INABILITY TO RESOLVE NONCOMPLIANCE. Should the applicant report that efforts to resolve noncompliance issues with local authorities have not been successful, then, if applicant elects to continue processing the application, the applicant shall file a written request for state preemption as authorized in WAC 463-28-020 within ninety days after completion of the public hearing required by RCW 80.50.090, or later if mutually agreed by the applicant and the council. The request shall address the following:

(1) That the applicant has demonstrated a good faith effort to resolve the noncompliance issues.

(2) That the applicant and the local authorities are unable to reach an agreement which will resolve the issues.

(3) That alternate locations which are within the same county and city have been reviewed and have been found unacceptable.

(4) Interests of the state as delineated in RCW 80.50.010.

NEW SECTION

WAC 463-28-050 FAILURE TO REQUEST PREEMPTION. Where noncompliance is at issue, failure of the applicant to file the written request as required in WAC 463-28-040 within the time permitted shall be sufficient grounds for the council to recommend to the governor denial of certification.

NEW SECTION

WAC 463-28-060 REQUEST FOR PREEMPTION—CONTESTED CASE. Should applicant elect to continue processing the application and file a

request with the council for state preemption, the council will schedule a contested case hearing on the application as specified under chapter 463-30 WAC. As the first order of business in the contested case, the council shall determine whether to recommend to the governor that the state should preempt the local land use plans or zoning ordinances for a site or portions of a site for the energy facility proposed by the applicant. The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100. The council shall determine this issue on the record before proceeding further in the contested case; thereafter, the remainder of the contested case shall proceed only if preemption is ordered by the council. Otherwise, the procedure shall follow WAC 463-28-080.

NEW SECTION

WAC 463-28-070 CERTIFICATION--CONDITIONS--STATE/LOCAL INTERESTS. If the council approves the request for preemption it shall include conditions in the draft certification agreement which give due consideration to state or local governmental or community interests affected by the construction or operation of the energy facility and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted or superseded pursuant to RCW 80.50.110(2).

NEW SECTION

WAC 463-28-080 PREEMPTION--FAILURE TO JUSTIFY. During the contested case hearing, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant.

NEW SECTION

WAC 463-28-090 GOVERNING RULES. Applications for certification of the energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable rules in effect on the day immediately preceding July 15, 1977.

SHORELINE EROSION PLANNING PROCESS

INTRODUCTION

The federal regulations governing development of shoreline erosion planning processes call for states to define the following:

(1) A method for assessing the effects of shoreline erosion;

(2) Procedures for handling erosion effects, including nonstructural procedures;

(3) Articulation of state policies pertaining to erosion, including policies regarding preferences for nonstructural or structural controls and/or no controls;

(4) A method for designation of areas for erosion control, mitigation and/or restoration as areas of particular concern or areas for preservation/restoration, if appropriate;

(5) A mechanism for continuing refinement and implementation of necessary management policies and techniques, if appropriate; and,

(6) An identification of funding programs and other techniques that can be used to meet management needs.

Section I of the following document contains descriptions of programs, authorities, projects, and studies at all levels of government which provide methods for assessing and managing the effects of erosion along Washington's coast. It is divided into three parts with Part A describing erosion-related programs and regulations administered by state and local government, Part B describing state-supported studies and projects designed to enhance knowledge of erosion and erosion management and Part C describing programs administered by the federal government. The reader will note that the primary state program for erosion planning and management is embodied in the Shoreline Management Act which mandates consideration of shoreline conditions in establishing use regulations for shoreline development.

Section II of this planning process contains an articulation of state policies concerning erosion and is divided into two parts. Part A contains citations of the most explicit state erosion policy expressed by the state legislature and administrative agencies. Part B summarizes policies which are procedural in nature such as the granting of authorities to local government.

Sections III and IV contain material relating to the optional considerations contained in (4) and (5) above. The state has not chosen to exercise its options under these sections due to the generally noncritical nature of erosion problems in Washington.

Section V contains information relative to funding programs available to meet managment needs with respect to erosion. It will be apparent to the reader that the primary state involvement is in the nature of planning and information gathering with direct structural solutions being financed by private parties and/or local or federal agencies.

An attempt has been made in this document to describe the range of mechanisms available within the State of Washington to address erosion and its related effects. Due to the nature of erosion, there is a fundamental dichotomy in these methods born of the recognition that it is a natural process and has beneficial, as well as adverse, effects. In the final analysis it is apparent that careful consideration must be given to any action which, either intentionally or unintentionally, will affect the erosion/accretion process in order that natural needs, as well as the needs of man, can be balanced.

I. METHODS FOR ASSESSING AND HANDLING THE EFFECTS OF EROSION

This segment of the planning process will describe existing programs, authorities, projects, and studies at all levels of government which provide methods for assessing and managing the effects of erosion along Washington's coast. Part A will consider current programs, regulations, and procedures administered at the state and local levels of government. Part B will describe state-supported studies and projects which may enhance the assessment and management of erosion impacts. A local government decision-making procedure for reviewing erosion control structure permit applications will also be discussed in Part B. Programs and studies administered by federal agencies which are of particular importance with respect to the control of erosion impacts in Washington, will be addressed in Part C.

Part A CURRENT STATE AND LOCAL PROGRAMS

As illustrated by provisions of the Shoreline Management Act and the State Environmental Policy Act, the state recognizes shoreline erosion and accretion as natural processes which may seriously and detrimentally affect, and be affected by, shoreline developments. With an emphasis on nonstructural control, state and local governments have been involved in regulating development to the extent that adverse economic, social, and environmental impacts from erosion are minimized or averted.

Assessment of erosion impacts occurs through two distinct processes. The first process consists of planning activities such as those conducted in shoreline master program development and refinement. The second process refers to project review procedures. Project review on a site-by-site basis occurs prior to issuance of substantial development permits, Corps of Engineers permits, and other permits for work in navigable waters or along the shoreline bordering those waters. Both planning activities (an active process) and project review procedures (a reactive process) will be addressed through the program descriptions below.

1. The Shoreline Management Act and Final Guidelines for Master Program Development

Local shoreline master programs developed under the Shoreline Management Act (SMA) and final guidelines provide a means by which local governments can manage development along their shores. This system includes provisions for both the assessment and management of the effects of erosion. The regulations adopted by counties and cities under the SMA are based, in part, upon a recognition that adverse effects of erosion can result from coastal development which is incompatible with land and water use capabilities. Sections of the SMA and final guidelines applicable to shoreline erosion will be reproduced in Section II, although discussed in general here.

Prior to the development of any shoreline master programs, it was required that local governments complete shoreline inventories. These inventories were designed to identify land uses, ownership, and information relating to the natural characteristics of the shoreline. Once information was gathered concerning existing development patterns, the biophysical capabilities of shorelands, and the goals and aspirations of the local citizenry, it was possible to categorize shorelines into various "environments."

The SMA guidelines establish four categories of shoreline use: natural, conservancy, rural, and urban. The designation of these "environments" provides a basis for the setting of use limitations and performance standards for shoreline development. The system was designed to encourage uses in each environment which enhance its character in accordance with stated goals and objectives. Therefore, each shoreline environment has a particular management philosophy associated with it. Local governments recognizing the potential effects of erosion with respect to possible future shoreline development, may classify that shoreline according to the type of management desired. The final guidelines recommend, for instance, the conservancy environment as "the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting erosion and slide hazards."

Shoreline master programs regulate at least 21 types of shoreline activities. The final guidelines suggest regulatory measures which coastal cities and counties can adopt that minimize the adverse impacts of erosion on various uses while recognizing that erosion is a natural process which also has beneficial effects. These use regulations may be applied selectively to any particular

class of shoreline environment such that shoreline development standards are consistent with the environment's management philosophy. A master program, for example, may prohibit bulkhead construction on shorelines designated as conservancy environments, while allowing controlled bulkhead construction in an urban environment. It should be noted that local master programs provide the state's primary vehicle for setting performance standards pertaining to coastal development and may contain more stringent regulations than the final guidelines suggest.

The substantial development permit process which is mandated by the SMA also provides a method for evaluating and managing erosion effects. In comparison with the active process of shoreline development planning described above, the permit process is reactive in the sense that a review of the potential effects of erosion is not made until a project is proposed and a permit application submitted. Depending upon a determination of compliance with the provisions of the local master program, projects may be approved, denied, or conditionally approved. Conditional approval is usually granted after consideration of specific site conditions indicates a need to mitigate potential adverse impacts. Since the conduct of shoreline activities which would affect or be affected by erosional processes may be contingent upon the issuance of a permit, the permit process itself constitutes a management technique.

2. State Environmental Policy Act

The State Environmental Policy Act of 1971 (SEPA) provides a means of assessing the effects of erosion. This act, modeled after the National Environmental Policy Act of 1969, initiates the assessment process when an applicant for a state or local government permit completes an environmental checklist. If it is determined from the checklist that the proposed action is major and would significantly affect the quality of the environment, the state or local government lead agency must prepare an environmental impact statement (EIS).

Following preparation and circulation of a draft EIS for governmental agency and public review, a final EIS is prepared incorporating comments from reviewers and responses from the lead agency. Public decision makers use the final EIS as a basis for their decisions regarding the proposed action.

Any project or action which would significantly impact natural shoreline processes such as erosion or accretion will be evaluated with respect to existing conditions through the EIS process.

3. Review Process for Corps of Engineers Permit Applications

The Department of Ecology coordinates the state agencies' review of permit applications submitted to the Corps of Engineers and provides the Corps with an official state response to proposed projects in navigable waters. Through the review and comment process, state agencies have the opportunity to provide an assessment of the potential effects of any proposed project on erosion and accretion processes. On applications for permits to establish erosion control structures, the effects of existing erosion as well as other potential impacts to natural systems of these proposed structures may be addressed.

When an agency has specific objections, the Corps process provides an opportunity for the applicant and objecting agency to resolve their conflict prior to final approval of the permit.

4. Department of Fisheries Bulkhead, Landfill, and Marina Design Criteria

The Department of Fisheries has adopted criteria governing the design of bulkheads, landfills, and marinas for all marine waters east of Cape Flattery. The objective in adopting such criteria is to reduce the adverse impacts of these developments on fish and shellfish resources.

The criteria include provisions for minimizing erosion and siltation and emphasize structural stability and adherance to water quality standards. The bulkhead and landfill regulations are based upon minimum tidal elevations at which the toe of vertical or horizontal structures can be located without adverse impacts to fisheries resources. The department has also adopted supplemental criteria for surf smelt spawning beaches. Supplemental criteria for herring spawning areas are currently being prepared for publication.

The bulkhead, landfill, and marina design regulations are implemented by the Department of Fisheries through its review and comment on Corps of Engineers' permit applications for work in navigable waters. In addition, some local governments have incorporated the criteria directly into their master programs as shoreline development regulations. Both of these methods represent a preventive approach to managing deleterious effects of development.

5. Department of Emergency Services

Another state agency with responsibilities pertaining to the control of the adverse effects of erosion is the

Department of Emergency Services (DES). DES's role is primarily coordinative, requiring close work with other state agencies and local governments to insure the provision of comprehensive disaster and emergency services.

DES provides disaster relief services needed as a result of flooding, earthquakes, severe storms, and other emergencies. Disaster preparedness planning undertaken by the department includes hazard prevention, emergency operation, and recovery.

Recently, a booklet has been completed by DES which provides planners and other interested parties with current information on hazards threatening Washington's coastal zone. Another project now underway involves organizing a hazard analysis library for use by local governments. Both of these two efforts contain coastal erosion and landslides as major topics.

DES is also attempting to communicate information to local jurisdictions concerning federal assistance for repair and protection of property subject to erosion damage. This work is being carried out on a case-by-case basis through the department's public assistance program.

Part B STATE-SUPPORTED STUDIES AND PROJECTS

This section will describe studies, projects, and procedures which may enhance the assessment and management processes discussed in Part A. A local government decision-making procedure for assessing erosion control permit applications will be offered first. The remainder of this section will address state-supported projects which, for the most part, are currently in preparation.

1. A Decision-making Procedure for Assessing Erosion Control Structure Permit Applications

The following decision-making process is suggested for use by local government in reviewing substantial development permit applications for projects containing erosion control structures. It is provided for the purpose of assisting local permitting authorities, whose shoreline master programs do not specifically and definitively address erosion and shore defense structures, to determine the relative significance of erosion events. The process is written in the context of the management scheme implemented through the Shoreline Management Act.

The definitions below should be used in conjunction with the table which immediately follows them. The entire decision-making process is outlined in the steps which follow the table.

Types of Erosion Events:

a. Continuous - ongoing erosion which is independent of seasonal variations or short-term events and which results in upland recession, usually slow, at continuous rates.

b. Cyclical - intermittent erosion which is caused by seasonal or other variations which are recurring at intervals over time. Examples include erosion caused by seasonal high tides, flooding, wind-induced waves, etc.

c. Discrete - localized erosion events which occur in the form of slides, rockfalls, soil creep, or other mass wasting. In many cases these events are caused or accelerated by bank undercutting.

Types of Erosion and Severity

Master Program Shoreline Designations	Continuous		Cyclical		Discrete	
	Slow	Fast	Frequent	Infrequent	Frequent	Infrequent
Natural	Lo	Lo	Lo	Lo	Lo	Lo
Conservancy	Lo	Lo	Lo	Lo	Lo	Lo
Rural	Lo*	Med	Med	Lo*	Med	Lo
Urban	Med*	Hi	Hi	Med*	Hi	Med*

*Evaluate with respect to property values due to improvements in place.

Step 1: Information requirements:

Identify environmental designation

Identify presence of erosion, type of erosion, and, if possible, rate or frequency of erosion.

Step 2: Preliminary definition of criticality:

With reference to Table, assign high, medium, or low criticality.

Step 3: Identify erosion-dependent accretion features:

Does an accretion feature (beach, spit, bar, etc.) receive significant feed material from the erosion site?

Step 4: Determine value of a feature, if any:

Does the feature have significant recreational, aesthetic, archaeological, or scientific value?

Step 5: Weight costs and benefits:

Compare value at risk on project site with value of accretion feature for public or private use. Variables might include rate of change in value of property over time; public/private benefits accruing to accretion feature; and probable change in value over time. Costs to applicant through requiring alternative siting or design changes should also be considered.

Step 6: Negotiation with permit applicant:

If a critical erosion factor is present on the site, define acceptable alternative measures for the development; e.g., require setbacks from eroding area or require applicant to mitigate adverse impacts (provide public access, dedicate comparable site elsewhere for public use, provide artificial nourishment, etc.).

Step 7: Permit action:

Issue, deny, or condition permit as appropriate.

Step 8: Determine adequacy of environmental designation:

Does the information gathered during permit processing suggest a need for amending the environmental designations?

Step 9: File information for retrieval:

Incremental information on erosional and depositional features of the shoreline should be stored for later retrieval. This data would be used by DOE staff for updating the Coastal Zone Atlas.

The above process should be used in conjunction with the state's Coastal Zone Management Atlas as it is made available.

2. Coastal Zone Atlas

Production of the Coastal Zone Atlas is currently a major effort under the state's Coastal Zone Management Program. Local, state, and federal agencies, as well as individuals

and firms in the private sector concerned with environmental protection, may use the atlas as a detailed, accurate, and uniform source of data. In particular, the atlas is designed to present a range of scientific information in a fashion that meets the needs of decision makers.

For each coastal county, the atlas will provide essential reference data pertaining to the physical and biological features of the marine coastline. Graphic and textual data will relate to coastal drift sectors, slope stability, coastal geology, land use/land cover, coastal flooding, critical floral/faunal areas, and sand and gravel resources.

The atlas will provide a method for assessing the impacts and examining relationships between erosional processes and existing or potential development. The drift sector component, for instance, indicates segments of shoreline along which littoral (along shore) movements of sediments occur at predicted rates. Individual drift sectors, including feed sources and accretion terminals are identified along with sediment types, wave exposure, and relative littoral transport. The drift sector component can thus be used to anticipate the effects of various land and water use activities on erosional processes and sediment transport. Potential developments which would be adversely impacted by erosional processes could similarly be recognized.

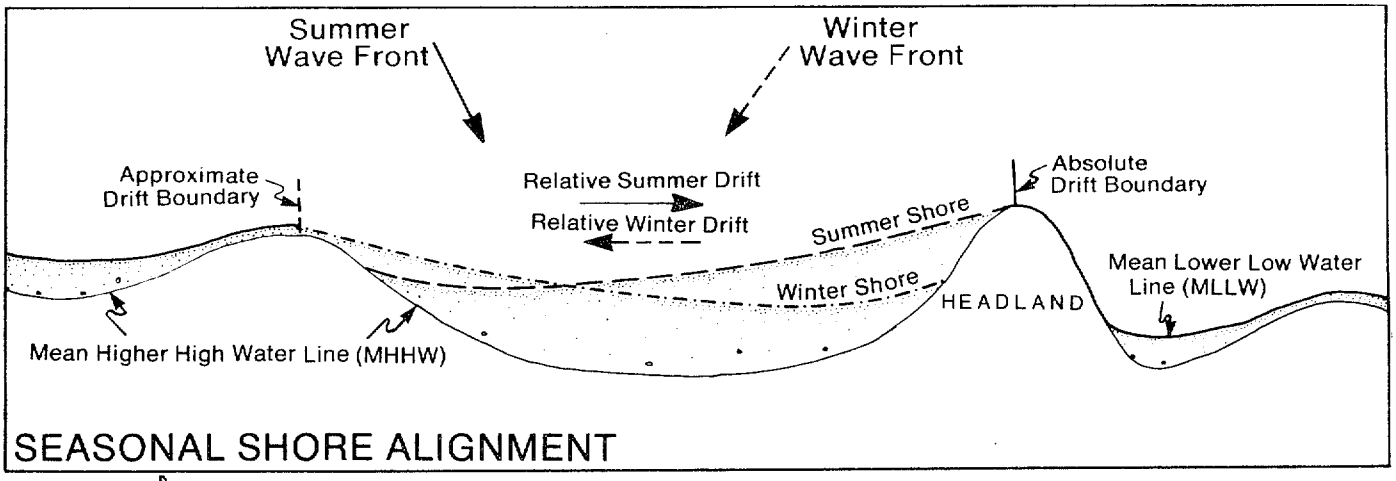
The other components of the atlas (including slope stability, coastal geology, land use/land cover, etc.) also combine to provide a strong biophysical data base for site suitability analysis with respect to erosion.

The Coastal Zone Atlas will allow well-informed decisions to be made regarding suitable designations of shoreline environments, development or refinement of shoreline use regulations, permit review and issuance, and general evaluation of master programs. With the use of the atlas, developments may be located in those areas in which they would be most compatible with land capabilities. Disruption of natural systems and individual and cumulative adverse impacts of development can be anticipated and averted.

The illustrations on the following pages are taken from the Coastal Zone Atlas and are intended to show the nature of the graphic display of the several erosion-related studies.

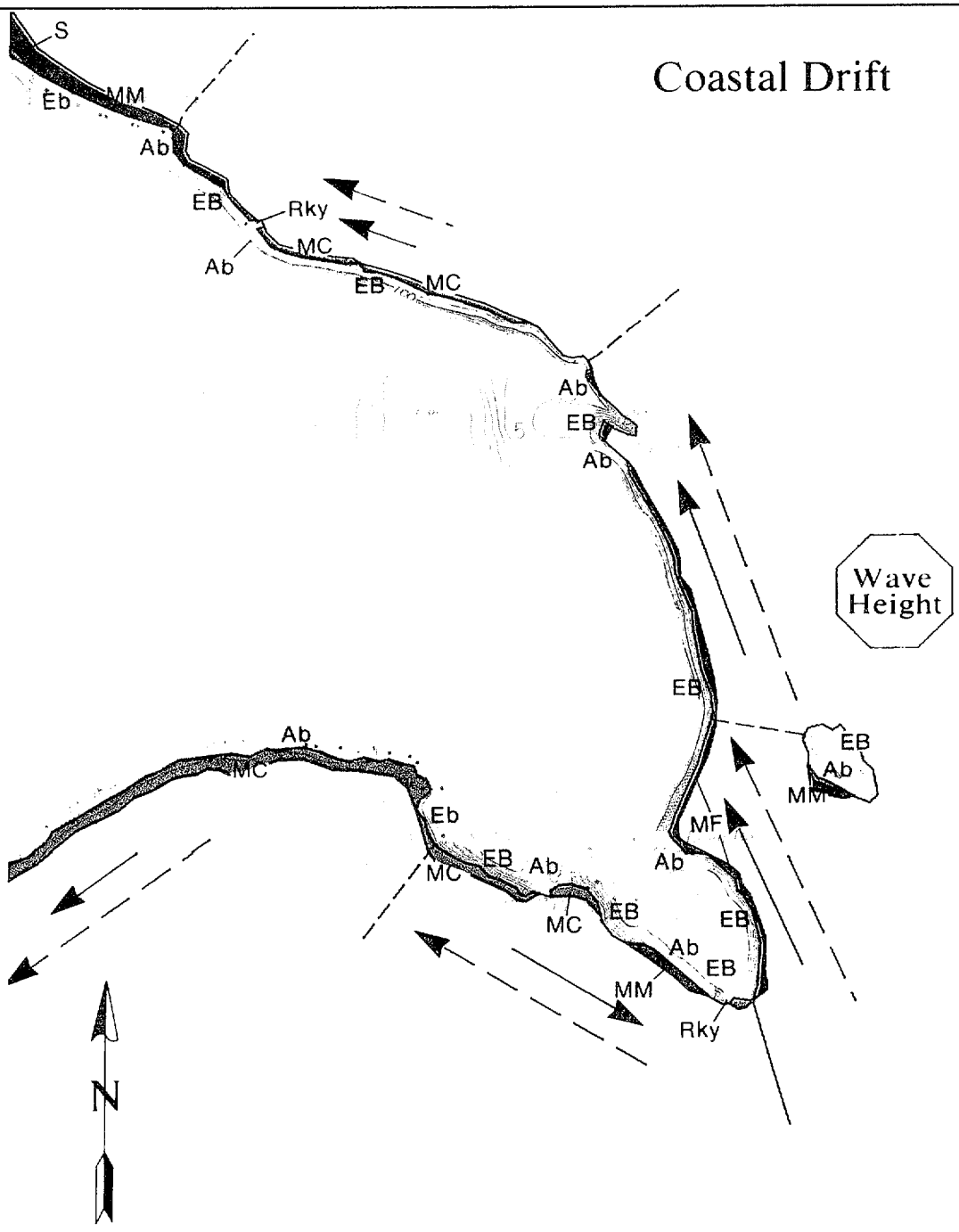
3. Department of Ecology Ongoing Research

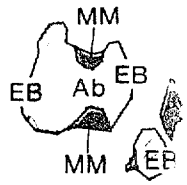
The department is currently funding two studies which will be used to improve management techniques relating to erosion or accretion and their effects.



SEASONAL SHORE ALIGNMENT

Coastal Drift





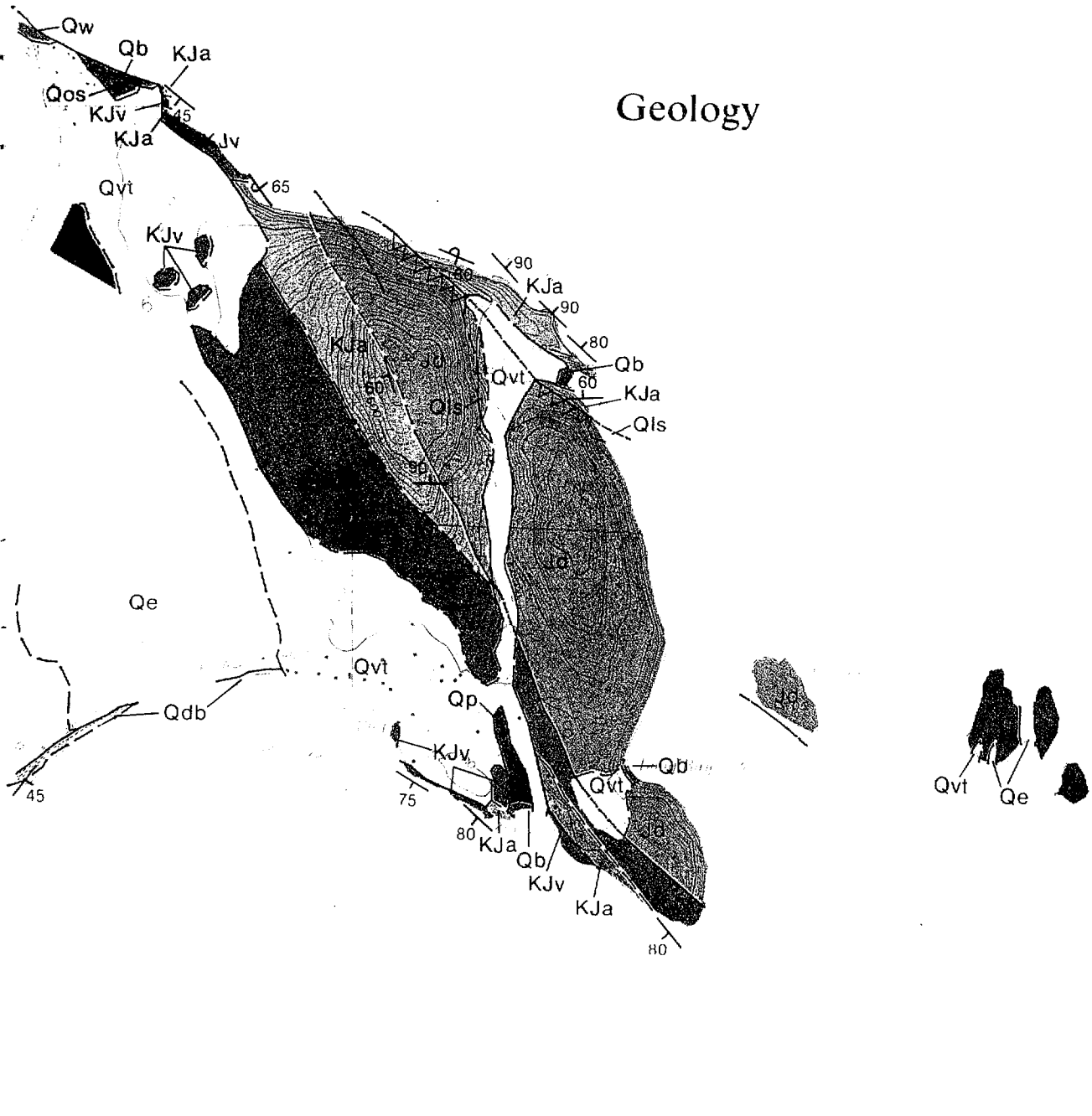
University of Washington
Cartographic Laboratory

Scale 1:24,000

0 5 1 Miles

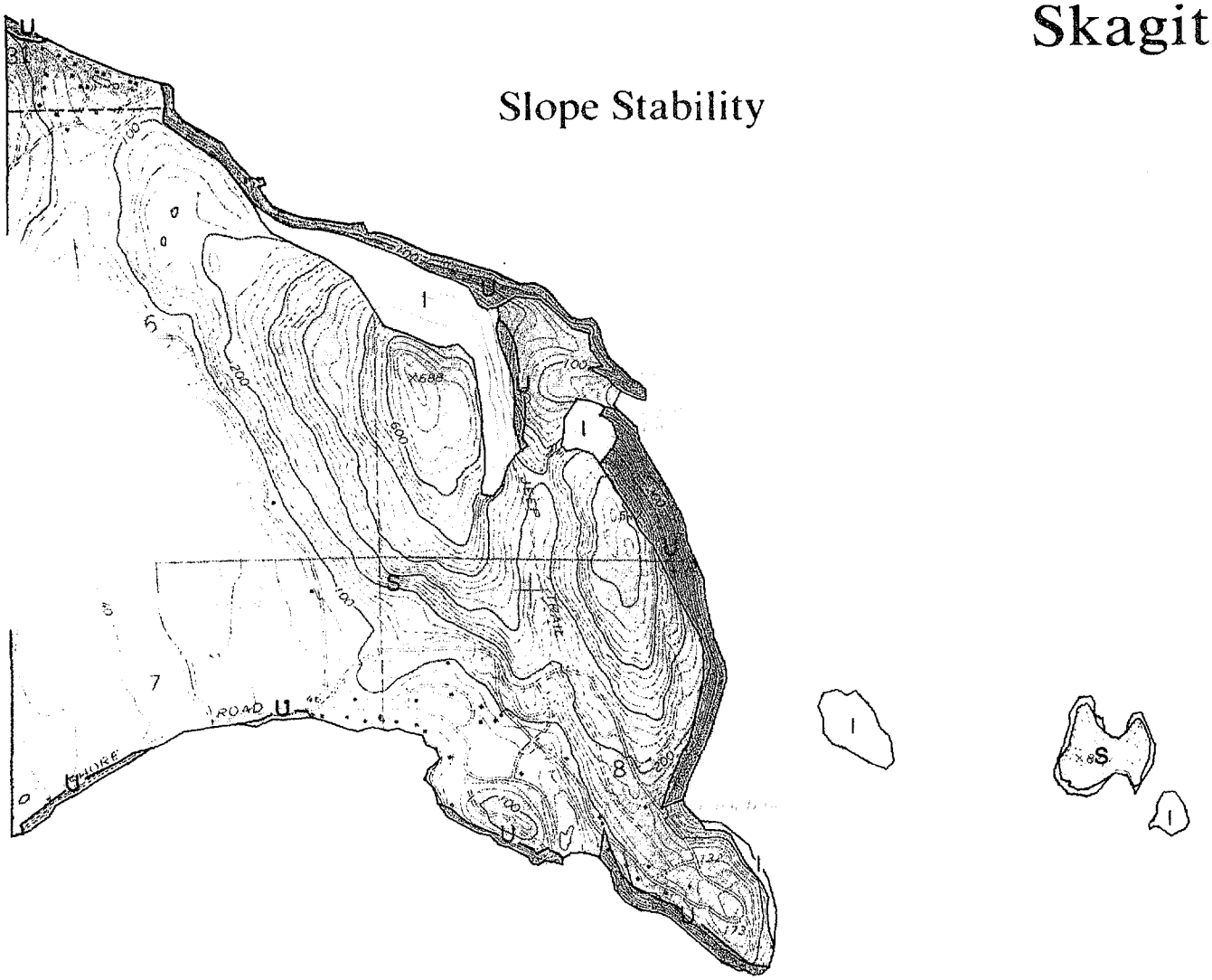
0 500 1000 1500 Metres

Geology


Qw
Qb
KJa
Qos
KJv
45
KJa
KJv
Qvt
65
KJv
90
KJa
90
80
Qb
Qvt
60
KJa
60
Qls
Qls
90
Jd
Qe
Qvt
Qdb
45
Qp
KJv
75
80
KJa
Qb
KJv
KJa
80
Jd
Qvt
Qb
Qvt
Qe
Qvt
S

Skagit Count

Slope Stability



Slope Stability

S Stable	Unstable Recent Slide
I Intermediate	Unstable Old Slide
U Unstable	Modified
Unstable Bluff	

The first study is concerned with the erosion and accretion characteristics of the Pacific Ocean beaches from the mouth of the Columbia River north to Moclips. This involves approximately 50 miles of coastal dune area. The study will attempt to define the nature and extent of erosion and accretion along the beaches and also will focus on management issues related to these processes. Among these issues are the advisability of modifying dune height for view enhancement and the designation of areas where sand can be removed for construction purposes without detriment to the beaches.

The results of this study will be made available to state agencies and local governments with management responsibilities in the coastal area in order that current policies can be evaluated and changes made where necessary.

The second study consists of evaluations of several privately constructed shoreline defense structures and/or potential sites for such structures. Conclusions will be drawn regarding the most appropriate type of solution to commonly experienced erosion problems. Each potential site will be analyzed in terms of the factors which bear on the erosion problem being experienced and solutions will then be proposed from an engineering standpoint. In each case, an attempt will be made to recommend solutions which cause the least amount of environmental damage. For sites which currently contain defense structures, the analysis will focus on questions relating to the effectiveness, cost, and reasons for failure, if any. The end product of this study will be a publication which provides a description of erosion problems in Puget Sound, an analysis of methods used to combat erosion, recommendations, and identification of sources of additional assistance. It will be made available for distribution through local government.

4. Accretion Beach Inventory

In 1975, the Interagency Committee for Outdoor Recreation (IAC) completed a comprehensive inventory of all significant undeveloped accretion beaches within Puget Sound, Hood Canal, the San Juan Islands, and the Strait of Juan de Fuca. Accretional features surveyed included hooks, barrier beaches, and spits which were depicted on maps and listed by county within the inventory report.

This effort was undertaken in view of the high recreation potential of these resources and the fact that many of them are threatened by bulkheading or other actions which upset the geologic/hydraulic processes which created and maintain them. The IAC recognized a critical need to locate and identify these accretional features so that public agencies and the general public would be alerted to their existence and value.

Part C FEDERAL AGENCY PROGRAMS

Programs and studies under the general administration of federal agencies will be described below. These efforts have been instrumental in assisting state and local governments concerned with structural and nonstructural control measures for handling erosion impacts.

1. U.S. Army Corps of Engineers Programs

The U.S. Army Corps of Engineers is involved in the identification of erosion causes and effects, assessment of the relative significance of erosion events, and the provision of structural and nonstructural control measures. Upon request from state or local agencies, the Corps may assist in the development of protection and restoration projects.

The Corps has authority to develop and construct small shore and beach protection and restoration projects that have not already been specifically authorized by Congress. An investigation of a small project is made after a formal request is received from a prospective sponsoring agency. This agency must be fully empowered under state law to provide all local cooperation and be financially capable of meeting its share of project costs. A project is adopted only after detailed investigations clearly indicate its engineering feasibility and economic justification. In this manner, the causes and effects of erosion and the impacts of applicable remedial measures are assessed. In addition, the relative significance of particular erosion problems may be determined.

Besides the availability of the small projects program in which the Secretary of the Army can authorize a study of beach erosion, local interests can gain assistance through the Corps' regular project program for which studies are individually authorized by Congress. Similar to the small program, the regular program provides for public hearings and investigations to assess the causes and effects of erosion, potential impacts of remedial measures, costs, and the desires and opinions of all parties affected by, or having an interest in, the erosion problem.

The Corps also has authority to respond to erosion protection needs under emergency conditions. Through Public Law 99 the Corps can repair or restore flood control works threatened or damaged by floods. Section 14 of the 1946 Flood Control Act allows the Corps to prevent damage to public works endangered by floods due to bank erosion. Highways, bridge approaches, municipal water supply systems, sewage disposal plants, and various other public services may benefit. Assistance may be in the

form of construction, repair, restoration, or modification of emergency streambank and shoreline protection works. With respect to flood hazard management, the Corps provides information, technical planning assistance, and guidance in identifying the magnitude and extent of potential floods.

Federal cost participation in the various programs described above varies depending upon a determination of the causes and effects of particular erosion problems as well as the benefits derived from shore protection. Section V (Funding Programs) will describe cost participation in greater detail.

The Corps is highly involved in research and demonstration projects involving erosion control measures. Under Section 54 of the Shoreline Erosion Control Demonstration Act of 1974 the Corps was directed to develop and disseminate information about relatively low-cost methods to prevent shoreline erosion. Because of financial losses resulting from erosion to private and nonfederal public landowners, there has been considerable interest in obtaining satisfactory financial and technical assistance to combat such erosion. The Corps selected 16 sites throughout the country to test and evaluate shoreline erosion control measures, including one site at Oak Harbor, Washington. The results of the demonstration project will be useful in assessing the effects of low-cost erosion control devices on a broad range of shoreline types.

In 1971, the Corps of Engineers conducted the National Shoreline Study which identifies and displays areas of critical and noncritical erosion and areas where erosion is absent along the state's shoreline. Areas of critical erosion were largely defined by assessments of erosion impacts. The rate of erosion was considered in conjunction with economic, industrial, recreational, ecological, and other relevant factors indicating that action to halt such erosion may be justified, pending further study. Major studies beyond the scope of the National Shoreline Study are required for definitive answers to these problems and may include examination of nonstructural control alternatives.

Noncritical erosion was defined after an assessment of the rate and major effects of erosion. It was suggested that nonstructural management practices may be more appropriate than structural actions to halt erosion in noncritical erosion areas.

The study also considered costs of various types of structural measures. Shoreline ownership patterns and uses were illustrated together with physical characteristics and historical shoreline changes.

Overall, the National Shoreline Study provided information essential to assess the nature and extent of Washington's erosion problems. The study does not, however, provide the depth of information on specific problem areas necessary to develop specific project proposals.

In summary, the Corps may respond to state and local requests for assistance in studying the causes and effects of erosion and in examining the costs and benefits associated with alternative remedial actions. In addition, the Corps provides funds for project development and a variety of related services, including review and inspection of particular erosion areas, provision of copies of pertinent Corps technical information, advice on current methods of erosion prevention, and technical aid in plan preparation, plan review, and construction inspection.

2. The National Flood Insurance Program

The National Flood Insurance Program (NFIP) is administered by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development. This program provides a means for anticipating and assessing the effects of flood-related erosion as well as a procedure for managing those effects. Mudslide- (i.e., mud flow) prone areas are also within the purview of the program but will not be discussed separately here.

Communities that participate in the NFIP are recognized as being susceptible to flood hazards. It is known that the effects of flood damage may include loss of property and life, health and safety hazards, impairment of government services, and economic disruption of the community.

After a community's desire and eligibility to participate in the NFIP is ascertained, the flood insurance study is undertaken. The study provides the basis for subsequent regulation and identifies the nature and degree of risk associated with development in the floodplain. Flood-related, erosion-prone areas and mudslide- (i.e., mud flow) prone areas may be delineated through the study. The United States Geological Survey has undertaken several of the flood insurance studies in Washington under contract with HUD. USGS involvement in the assessment of erosion will be considered in the next part of this section.

The procedure for managing flood hazard areas requires development of floodplain management regulations by the city or county in conjunction with a development permit system. The types of regulations adopted depend upon the nature and degree of flood hazard risk within a specified geographic area, but generally address such activities as filling, development of structures at or above the base

flood elevation, flood-proofing, and anchoring of structures. Proposed development must be relatively safe from flood-related erosion and must not cause or aggravate such erosion. Setbacks may be required for new developments such that a natural vegetative or contour strip provides an erosion safety buffer. Communities may also wish to acquire erosion-prone areas for open space purposes or relocate dangerously situated existing developments.

It is expected that regulations adopted by local governments in response to NFIP requirements will in most cases reflect or exceed the regulations adopted by the state pertaining to its designated flood control zones (Chapters 86.16 RCW, 508-60 WAC, 173-142 WAC). State zones have been established within the riverine floodplains of 14 major streams in the coastal zone. Certain development restrictions and structural requirements are applied through a permit system adminstered by the Department of Ecology.

These and other regulatory measures may be adopted to manage development such that potential adverse effects of flooding, including erosion damage, may be averted. For NFIP participating communities, the provision of flood insurance under subsidized and actuarial rates may also contribute to the management of economic losses as a result of flood-related erosion effects.

3. United States Geological Survey (USGS)

USGS has conducted several floodplain studies for Washington communities participating in the NFIP. In addition, this agency is involved in the preparation of a variety of informational materials which contribute to the assessment of erosional processes and their effects. Included among these are maps and other reference materials which address such subjects as natural hazard areas, geology, soil conditions, topography, vegetation, and historical shorelines changes.

The Office of Land Information and Analysis within USGS has identified several gaps in available planning and decision-making data for the Puget Sound region. Work elements proposed to fill these data gaps include studies designed to generate information pertaining to coastal flooding, beach and nearshore conditions, and erosional and depositional processes. The results of such studies when made available to governmental agencies with coastal management responsibilities should allow improvements in management capabilities.

4. Soil Conservation Service (SCS)

SCS provides both technical and financial assistance to government agencies and private individuals and organizations concerned with conservation of land and water resources. This assistance has been useful in assessing and managing coastal erosion impacts.

In Grays Harbor County, SCS has provided assistance for two projects designed to control critically eroding dune areas. At Ocean Shores and at Twin Harbors State Park, both structural and vegetative measures have been designed for stabilizing the dunes. Studies were conducted to assess the erosion problems in these areas and to determine suitable management alternatives. Both of these locally sponsored projects have received SCS services through the Resource Conservation and Development Program. RC&D projects are available to provide community-type measures for flood prevention and erosion and sediment control. Financial assistance can also be obtained by private landowners through programs in which USDA shares the cost of applying certain soil and water conservation measures.

Other SCS efforts which contribute to the assessment and management of erosion include the conduct of soil surveys, evaluation of plants for suitability in soil stabilization, and the recommendation of cultural practices for vegetative establishment. In addition, SCS may conduct flood hazard analyses and related floodplain management studies for local governments. In the event of flood-related natural disaster, SCS is authorized to undertake emergency measures to retard runoff and prevent soil erosion in order to safeguard lives and property.

II. ARTICULATION OF STATE POLICIES

This section identifies state legislative and administrative policy pertaining to shoreline erosion. Reference will be made to the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), and Department of Fisheries criteria for the design of bulkheads, landfills, and marinas. Organization will follow a format based upon the agency most responsible for administration of the policy cited.

Part A contains citations of policy statements which are generally substantive in nature and which most explicitly express the state's management philosophies and concerns relating to shoreline erosion. Part B summarizes policies which more generally express the state's management philosophies and values concerning coastal resources. These policies include those which grant authorities or are procedural in nature. It should be noted that the summaries in Part B only paraphrase aspects of the regulations which pertain to shoreline erosion.

Part A SUBSTANTIVE STATE POLICY

1. Department of Ecology

The Department of Ecology is responsible for administration of the Shoreline Management Act (Chapter 90.58 RCW) and several sections of the Washington Administrative Code which derive from this statute.

RCW 90.58.020 - LEGISLATIVE FINDINGS--STATE POLICY ENUNCIATED--USE PREFERENCE. (On shorelines of statewide significance) . . . . uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

WAC 173-16-040(4)(b)(i) - NATURAL ENVIRONMENT. The natural environment is intended to preserve and restore those natural resource systems existing relatively free of human influence. Local policies to achieve this objective should aim to regulate all potential developments degrading or changing the natural characteristics which make these areas unique and valuable.

The main emphasis of regulation in these areas should be on natural systems and resources which require severe restrictions of intensities and types of uses to maintain them in a natural state.

WAC 173-16-040(4)(b)(ii) - CONSERVANCY ENVIRONMENT. The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are nonconsumptive of the physical and biological resources of the area. Activities and uses of a nonpermanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment.

The conservancy environment would also be the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting erosion and slide hazards, areas prone to flooding, and areas which cannot provide adequate water supply or sewage disposal.

WAC 173-16-040(4)(b)(iii) - RURAL ENVIRONMENT. New developments in a rural environment are to reflect the

character of the surrounding area by limiting residential density, providing permanent open space and by maintaining adequate building setbacks from water to prevent shoreline resources from being destroyed for other rural types of uses.

WAC 173-16-040(5) - SHORELINES OF STATEWIDE SIGNIFICANCE

(b) Preserve the natural character of the shoreline. Development guidelines:

(i) Designate environments and use regulations to minimize man-made intrusions on shorelines.

(ii) Where intensive development already occurs, upgrade and redevelop those areas to reduce their adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low intensity use or under developed areas.

(iii) Insure that where commercial timbercutting is allowed as provided in RCW 90.58.150, reforestation will be possible and accomplished as soon as practicable.

(c) Results in long-term over short-term benefit. Development guidelines:

(i) Prepare master programs on the basis of preserving the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of statewide significance, should be severely limited.

(d) Protect the resources and ecology of shorelines. Development guidelines:

(i) Leave undeveloped those areas which contain a unique or fragile natural resource.

(ii) Prevent erosion and sedimentation that would alter the natural function of the water system. In areas where erosion and sediment control practices will not be effective, excavations or other activities which increase erosion are to be severely limited.

(iii) Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human uses.

WAC 173-16-060(3) - FOREST MANAGEMENT PRACTICES

(a) Seeding, mulching, matting and replanting should be accomplished where necessary to provide stability on areas of steep slope which have been logged. Replanted vegetation should be of similar type and concentration as existing in the general vicinity of the logged area.

(f) Logging should be avoided on shorelines with slopes of such grade that large sediment runoff will be precipitated, unless adequate restoration and erosion control can be expeditiously accomplished.

(h) Logging within shoreline areas should be conducted to insure the maintenance of buffer strips of ground vegetation, brush, alder and conifers to prevent temperature increases adverse to fish populations and erosion of stream banks.

WAC 173-16-060(6) - MINING

(a) When rock, sand, gravel and minerals are removed from shoreline areas, adequate protection against sediment and silt production should be provided.

(b) Excavations for the production of sand, gravel and minerals should be done in conformance with the Washington State Surface Mining Act.

(c) Local governments should strictly control or prohibit the removal of sand and gravel from marine beaches.

(d) When removal of sand and gravel from marine beaches is permitted by existing legislation, it should be taken from the least sensitive biophysical areas of the beach.

WAC 173-16-060(9) - UTILITIES

(a) Upon completion of installation/maintenance projects on shorelines, banks should be restored to preproject configuration, replanted with native species and provided maintenance care until the newly planted vegetation is established.

WAC 173-16-060(11) - BULKHEADS

(a) Bulkheads and seawalls should be located and constructed in such a manner which will not result in adverse effects on nearby beaches and will minimize alterations of the natural shoreline.

(e) The construction of bulkheads should be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkhead.

WAC 173-16-060(13) - JETTIES AND GROINS

(a) Master programs must consider sand movement and the effect of proposed jetties or groins on that sand movement. Provisions can be made to compensate for the adverse effects of the structures either by artificially transporting sand to the downdrift side of an inlet with jetties, or by artificially feeding the beaches in case of groins.

(b) Special attention should be given to the effect these structures will have on wildlife propagation and movement, and to the design of these structures which will not detract from the aesthetic quality of the shoreline.

WAC 173-16-060(16) - DREDGING

(a) Local governments should control dredging to minimize damage to existing ecological values and natural resources of both the area to be dredged and the area for deposit of dredged material.

(b) . . . . depositing of dredged material in water areas should be allowed only for habitat improvement, to correct problems of materials distribution affecting adversely fish and shellfish resources, or where the alternatives of depositing material on land is more detrimental to shoreline resources than depositing it in water areas.

(c) Dredging of bottom materials for the single purpose of obtaining fill material should be discouraged.

WAC 173-16-060(18) - ROAD AND RAILROAD DESIGN AND CONSTRUCTION

(b) Roads located in wetland areas should be designed and maintained to prevent erosion and to permit a natural movement of ground water.

WAC 173-16-060(19) - PIERS

(b) Open-pile piers should be encouraged where shore trolling is important, where there is significant littoral drift and where scenic values will not be impaired.

WAC 173-16-060(21) - RECREATION

(f) To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods. Automobile traffic on beaches, dunes and fragile shoreland resources should be discouraged.

WAC 173-16-060(12) - BREAKWATERS

(a) Floating breakwaters are preferred to solid landfill type in order to maintain sand movement and fish habitat.

(b) Solid breakwaters should be constructed only where design modifications can eliminate potentially detrimental effects on the movement of sand and circulation of water.

WAC 173-16-090(14) - LANDFILL

(a) Shoreline fills or cuts should be designed and located so that significant damage to existing ecological values or natural resources, or alteration of local currents will not occur, creating a hazard to adjacent life, property and natural resources systems.

(b) All perimeters of fills should be provided with vegetation, retaining walls, or other mechanisms for erosion prevention.

(c) Fill materials should be of such quality that it will not cause problems of water quality. Shoreline areas are not to be considered for sanitary landfills or the disposal of solid waste.

(d) Priority should be given to landfills for water-dependent uses and for public uses. In evaluating fill projects and in designating areas appropriate for fill, such factors as total water surface reduction, navigation restriction, impediment to water flow and circulation, reduction of water quality, and destruction of habitat should be considered.

2. Department of Fisheries

The following are selected criteria governing the design of bulkheads, landfills, and marinas in Puget Sound, Hood Canal, and Strait of Juan de Fuca for protection of fish and shellfish resources. These criteria were adopted in 1971 by the Department of Fisheries:

Bulkhead and Landfill Design Criteria

In cases where solid bulkhead and/or landfill construction principles must be utilized, the following criteria must be strictly adhered to and shall be included in any approval written by the State of Washington . . . .

Bulkheads and/or landfills may be constructed with a vertical face seaward to the tidal elevations listed by geographic areas . . . . Construction to these tidal elevations may make use of any type of permanent facing material, not subject to erosion or siltation.

Any and all construction in waters between the plus tide levels listed . . . must utilize either of the following methods of construction.

a. All faces must be riprapped with material of a size that will be stable and a slope not steeper than 1-1/2 ft. horizontally to 1 ft. vertically.

b. All face construction must be of a stair-stepped design utilizing concrete or other permanent structural materials. Each step shall not be less than 1 ft. in width.

The Washington State Water Quality Standards shall be strictly adhered to at all times.

Marina Design Criteria

In cases where solid bulkhead and/or landfill construction principles must be utilized, the following provisions must be strictly adhered to . . .

The beach inside a marina may be constructed with a vertical face seaward to the tidal elevations listed by

geographic areas . . . Construction to these tidal elevations may make use of any type of permanent facing material, not subject to erosion or siltation.

Construction of the beach may extend seaward of the elevations shown but must utilize either of the following methods of construction above 0.0 MLLW tide levels.

a. All faces must be riprapped with material of a size that will be stable and a slope not steeper than 1 1/2 ft. horizontally to 1 ft. vertically.

b. All face construction must be of a stair-stepped design utilizing concrete or other permanent structural materials. Each step shall not be less than 1 ft. in width.

Isolated breakwaters may be of any design of permanent material not subject to erosion or siltation with no special side slopes.

Part B PROCEDURAL AND ENABLING LEGISLATIVE POLICY

1. Department of Ecology

The following citations are drawn from the Shoreline Management Act (Chapter 90.58 RCW), sections of the Washington Administrative Code which derive from this act, and the Flood Control Zone Act (Chapter 86.16 RCW).

RCW 90.68.020 - directs the DOE and local governments preparing master programs to give preference to certain uses on shorelines of statewide significance. Among other considerations, preference is given to uses which preserve the natural character of the shoreline, result in long-term over short-term benefit, and protect the resources and ecology of the shoreline.

RCW 90.58.100 - requires that master programs include a conservation element for the preservation of natural resources.

RCW 90.58.150 - controls commercial timber cutting within 200 feet of the high-water mark on shorelines of statewide significance.

WAC 173-16-050 - (1) indicates the importance of recognizing the influence that structures such as groins, bulkheads and jetties have on beach formation; (3) recognizes dunes as a natural levee and final protection against the sea. It is noted that the destruction of primary dunes can endanger uplands and that beach sand removal may severely disturb the dunes' sediment supply. Stabilization of dunes with vegetation is encouraged; (10) describes

the susceptability of Puget Sound bluffs to fluvial and marine erosion and recognizes the presence of slide hazards in those areas.

WAC 173-16-060 - directs local government to identify the types of natural systems within which uses are proposed and to impose development regulations such that the integrity of the natural systems may be maintained.

WAC 173-16-060(8) - states that residential developers should be required to indicate how they plan to preserve shore vegetation and control erosion during construction.

RCW 86.16.010 - declares that the state assumes full regulatory control over navigable and non-navigable waters in order to aid in the alleviation of recurring flood damages.

RCW 86.16.020 - establishes regulatory control through the designation of flood control zones, the issuance of permits, and adoption of regulatory orders to control development which could adversely affect the regimen of a stream.

RCW 86.16.160 - states that the provisions of the chapter do not prevent local government from establishing flood control programs.

2. Local Governments

Through constitutional and statutory provisions, local governments have broad powers which may be used to manage erosion-related problems. Planning enabling statutes, for instance, are contained within Titles 35 and 35A for cities and Title 36 for counties. Individual citations granting these broad powers are too voluminous to reproduce here; however, certain distinct authorities granted to counties, port districts, and flood control districts are presented.

a. County Flood Control

RCW 86.12.010-020 - authorizes counties to levy taxes and expend funds for such purposes as the construction and maintenance of bulkheads, riprap, and other shore protection measures. Lands may be acquired for flood control purposes.

b. Port Districts

RCW 53.08.060 - authorizes districts to create and improve waterways within the district, including the straightening, widening, and deepening of any water courses, bays, lakes, or streams.

RCW 53.08.070 - grants port districts the power to raise and expend revenues for the purpose of dredging, canal construction, land leveling, or filling.

c. Flood Control Districts

RCW 86.09.001 - authorizes the creation of flood control districts for purposes which include the protection of life and property and conservation of natural resources.

RCW 86.09.010 - defines the various objectives of such districts for the control of floods. Purposes may include the investigation, planning, construction, improvement, replacement or acquisition of flood control works, and equipment and property connected with the alleviation of flood dangers and damages.

RCW 86.09.151 - grants flood control districts numerous powers to carry out their objectives.

3. General

Adherence to the State Environmental Policy Act (SEPA) is required by all state agencies and local governments. This act, modeled after the National Environmental Policy Act, establishes a process for evaluating the impacts of man's activities on the quality of the environment.

Part I(A)(2) of this paper considered SEPA's role in the assessment of erosion impacts. With respect to that discussion, two sections of the act are capsulated below.

RCW 43.21.C.020 - expresses the state's objectives concerning the maintenance and enhancement of environmental quality, and sets out, in broad terms, the rights and responsibilities of the state and the citizens of Washington in achieving those objectives.

RCW 43.21.C.030 - directs all branches of government at the state and local levels to interpret and administer state laws and regulations in accordance with the policies set forth in the chapter. Guidelines mandate the consideration of environmental amenities and values in any planning and decision making which may have an impact on man's environment. Criteria are provided which establish the requirements for and contents of environmental impact statements.

III. DESIGNATION OF AREAS FOR EROSION CONTROL/MITIGATION AS AREAS OF PARTICULAR CONCERN OR PRESERVATION OR RESTORATION

The Washington coastal program currently designates as APC's two of the most severely erosion-impacted locations in the coastal zone: Toke Point in Willapa Bay and Ediz Hook on the Strait of Juan de Fuca.

The U.S. Army Corps of Engineers has investigated the erosion problem at Toke Point and a plan of improvements consisting of a seawall and a system of groins to protect 7,000 feet of beachfront has been prepared. The study has been deferred pending a solution to the beach erosion problem at Cape Shoalwater (also an APC) a few miles to the west.

At Ediz Hook, which protects Port Angeles Harbor, the entire length of the spit is threatened with erosion and possible destruction. Emergency erosion control works consisting of rock revetment and beach replenishment were placed in 1974. Permanent repairs are planned for a later date.

IV. FUNDING PROGRAMS AND OTHER TECHNIQUES USED TO MEET MANAGEMENT NEEDS

Several programs and authorities support state and local efforts to manage the impacts associated with coastal erosion. Most state agencies receive direct appropriations from the Legislature to conduct their operations. Local governments, including cities, counties, port districts, and flood control districts are authorized to raise revenues to carry out their purposes subject to limitations imposed by the Legislature.

Funds granted to the state under Section 306 of the Coastal Zone Management Act have been instrumental in the administration of the Shoreline Management Act by state and local governments. 306 funds have also supported production of the state's Coastal Zone Atlas. The current research sponsored by the DOE (described in Part I(B)(3)) is financed with monies granted to the state under Section 305 of the CZMA.

The various programs and studies undertaken by the Corps of Engineers pertaining to erosion control are federally financed. Federal cost participation varies, depending on fund availability as well as a determination of the causes and effects of particular erosion problems and the benefits to be derived from shore protection. Erosion attributable to federal navigation works may be mitigated entirely with federal funds. In other cases, depending on ownership, land use, and the degree of public benefit arising from protection of facilities, the federal cost share of total project costs may be up to 70 percent. Both publicly and privately owned shorelands may be eligible for assistance.

Communities participating in the National Flood Insurance Program obtain another form of aid. Although not providing direct funding to local governments, the Department of Housing and Urban Development

does finance local flood insurance studies and subsidizes flood insurance for property owners.

The Soil Conservation Service provides technical and financial assistance to both private property owners and governmental agencies for the conservation of land and water resources. Funding programs include grants to conservation districts, cost-sharing to encourage the provision of conservation measures, and support of resource conservation and development projects through grants and low-interest loans.

BEACH ACCESS PLANNING PROCESS

INTRODUCTION

The State of Washington is uniquely endowed among the 48 contiguous states in terms of the range of its marine shoreline types and their extent. It is ironic, but nevertheless true, that a majority of these shoreline areas are generally inaccessible to the public. In recognition of the need for additional areas for public recreation the state has enacted various pieces of legislation, and evolved various programs, to provide the full range of recreational opportunities for its citizens.

The following planning process details the nature of beach access and protection planning within the state. The primary focus of the process is on existing state government programs since collectively they provide a comprehensive and functional means for achieving the goals established by legislative and administrative policy. In addition to the descriptions of state programs, the process includes information relative to: the supply of, and demand for beach resources; types of beach access and protection considered to be appropriate by the state; the articulation of state policies (both legislative and administrative); the designation of shorefront areas as areas of particular concern; a mechanism for continuing refinement of necessary management techniques; and funding programs which can be used to meet management needs. Each of these sections was drafted in response to the federal regulations concerning development of a beach access planning process.

I. PROCEDURE FOR ASSESSING PUBLIC AREAS REQUIRING ACCESS OR PROTECTION

GENERAL

It is important to realize that state and local programs are generally geared to a coherent process for providing beach access through the Interagency Committee for Outdoor Recreation (IAC). The IAC acts as a kind of central clearinghouse for outdoor recreation programs through the twin vehicles of the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP), with its articulation of outdoor recreation funding priorities, and the administration of the state's outdoor recreation account. Disposition of limited funding is thus channeled to the facilities which are most needed. The current edition of SCORP recognizes that beach-oriented recreation is in high demand and relatively short supply and this recognition is carried over into the priorities for funding it establishes. Determination of specific projects to be funded is based on the needs identified in SCORP and such factors as geographic location, number of persons to benefit, etc.

The protection of beach resources is most comprehensively accomplished through the local master programs developed under the Shoreline Management Act, although direct acquisition programs provide a more complete protection method. Shoreline master programs provide a means whereby shorelands possessing outstanding

natural characteristics can be afforded a substantial degree of protection from development, while those areas which are suited to modification are generally placed under more permissive designations. The substantial development permit process provides the enforcement capability necessary to insure that the provisions of local master programs are carried out. The Shoreline Management Act thus provides a planning process which is complete in and of itself, and which also effectively complements the range of state environmental protection programs.

A. SUPPLY AND DEMAND

The Department of Natural Resources (DNR) estimates that there are approximately 2,700 miles of marine coastline in the State of Washington. Within this coastline are a wide variety of shoreline types ranging from wide, sandy beaches to rugged, rocky areas. In general, the state's marine shoreline can be divided into two broad geographical categories. The Puget Sound, Strait of Juan de Fuca and north Pacific coastal areas were heavily influenced by glacial activity and, as a result, the beaches are narrow and are backed by forested bluffs. From the mouth of the Quinault River southward the beaches are wide and sandy and, in many areas, are backed by extensive dune formations.

Approximately 1,800 of the 2,700 shoreline miles are contained within Puget Sound and the Strait of Georgia. This region contains few beach areas which are not inundated at high tide. Bluffs ranging from 10 to 500 feet in height rim a majority of the sound making access to beach and intertidal areas difficult. The north shore of the Olympic Peninsula borders the Strait of Juan de Fuca. Rugged, rocky shoreline predominates in the western portion of the strait while further eastward the coastal features are more reminiscent of Puget Sound. The Pacific coastline south from Cape Flattery to the Quinault River can generally be described as rugged and rocky. This section comprises some of the last remaining coastal wilderness left in the continental United States, and except for several Indian reservations, is contained within Olympic National Park. South of the Quinault River broad sandy beaches are the predominant feature. These beaches are perhaps used more heavily by recreationists than any other in the state.

Data taken from the Washington CZM program document indicates that approximately 1,160 miles of marine shoreline are in state ownership today. This figure constitutes slightly more than 40 percent of the total marine shoreline in the state. Local governments also manage numerous marine shoreline parcels. These parcels are generally small in size but they contribute a great deal to recreational supply due, in many cases, to their close proximity to population concentrations. The departments of Game and Fisheries and the State Parks and

Recreation Commission manage approximately 400 miles of the state's ownership and the DNR manages the rest. The total mileage figures are misleading, however, when considered in the context of beach access since some state-owned tidelands are located in rocky areas where access is all but impossible, and in many other areas the uplands are privately owned and the tidelands are inaccessible except by boat. The IAC has estimated that only 222 miles of saltwater frontage are in public recreation ownership when tidelands with private upland ownership are excluded.

The demand/supply analysis contained in SCORP indicates a user needs deficiency of 16,345 acres of saltwater shoreland. This deficiency considers only upland ownership; tidelands are not included. Since this needs figure was computed in 1973, it is likely that the current need exceeds supply by an even greater margin. SCORP data estimated a 1970 demand of 17,615,000 activity occasions while the 1980 projection is 19,288,000 activity occasions on saltwater shorelands. These estimates were based upon population increase only and are probably low since historical trends have shown that the propensity of the people to recreate has increased at a far greater rate than the rate of population increase.

A public lands inventory was recently compiled by the IAC which identified the availability of public outdoor recreational sites and facilities throughout the state. Included in the inventory is a survey of recreational areas with saltwater frontage and an identification of associated facilities such as parking, shore access, pier or dock availability for fishing, boat launching lanes, trails, or swimming beach. Standards will be developed and employed to integrate this most recent supply data with demand estimates to determine deficiencies in type, size, and location of recreational facilities throughout the state.

SCORP figures indicate that nearly 74 percent of the saltwater shoreland demand is generated in the central Puget Sound area. Not surprisingly, this area also contains the largest population concentration in the state. Since potential saltwater recreational sites within the district are few, most of the demand is accommodated outside the area. IAC's origin - destination studies have shown that the Pacific Ocean beaches, San Juan Islands, and Hood Canal are the most popular destinations although all coastal recreation areas receive substantial usage. Saltwater shorelands also receive a great deal of use from citizens living in Eastern Washington as well as from out-of-state visitors.

Although some existing marine shorefront facilities may be underused, it is most certainly the case that many areas are now taxed beyond their carrying capacity. Since the population of Washington State is increasing at a rapid rate, the supply of recreational opportunities must increase proportionately to avoid aggravating the current supply shortfall.

B. APPROPRIATE TYPES OF ACCESS OR PROTECTION

Given below are descriptions of the types of beach access and protection which are considered appropriate for funding under Section 315 of the Coastal Zone Management Act of 1972. Funding through other sources need not be limited to these forms of access and protection although they do constitute the principal types provided by state and local government.

1. Access

   a. Lateral - lateral access consists of acquiring use rights to extensive areas of beach. The acquisition of these use rights can be through either direct purchase or any of a number of less-than-fee acquisition techniques. In practice, most acquisitions of this type are related to recreation facilities which consist of upland property as well as beach areas (e.g., a state park or wildlife refuge), but it is possible that only beach property could be acquired (e.g., acquisition of a stretch of privately owned tideland connecting two areas of publicly owned tideland).

   b. Perpendicular - perpendicular access is access consisting of an easement or corridor from a publicly owned facility (e.g., a public roadway) to a beach area. Such access can be acquired through direct purchase or by gaining an easement across private property by any of several means. Also included would be such land as is necessary for auxiliary facilities such as parking and restrooms. The most common situation which would occasion the acquisition of perpendicular access is where private property separates an extensive area of publicly owned tidelands (e.g., the ocean beaches) from a public roadway.

   c. Boat launching - boat launching facilities consist of ramps and hoists used for launching recreational watercraft. Since many of Washington's public beaches are inaccessible except by boat, these facilities are of extraordinary importance in the overall beach access situation. Examples of the types of beaches which are accessible only by boat include many stretches of Puget Sound tideland where the upland is in private ownership and also publicly owned beaches on islands which have no ferry service.

   d. Boating destination - since Washington has several state parks which are accessible only by boat (usually consisting of all or a portion of an island) it is appropriate to consider mooring facilities as legitimate access types when they are an integral part of an access to such recreation sites.

e. Urban facilities - the definition of urban facilities constituting an appropriate type of beach access is necessarily more flexible than the definition applied to other types. Since most urban waterfront areas have been radically altered from their original condition by the works of man, the standard definitions simply do not apply. Such facilities as piers, docks, walkways, and other types of structures allowing visual or physical access to the water are considered as forms of beach access for the purposes of this planning process.

f. Visual - any facility which provides visual access to a beach or waterfront area is considered as a legitimate form of beach access. Such facilities include, but are not limited to, scenic overlooks, scenic roadways, viewing platforms, and such waterfront structures as piers and docks.

2. Protection

a. Reserves - reserves are areas which are set aside for the protection of unique or important environmental or cultural attributes. Generally this type of protection is accomplished through direct acquisition or by changing the status of lands which are already in public ownership. In some cases, reserves are open for a particular type of consumptive use (e.g., hunting on Game Department Wildlife Recreation Areas) but most reserves are maintained as relatively inviolate sanctuaries. Examples of the various types of reserves include wildlife refuges and historical sites.

b. Regulatory programs - various types of regulatory programs can be used to provide protection for environmental or cultural qualities. Included among these are land use planning techniques (zoning, setback requirements, etc.), permitting under environmental statutes (Shoreline Management Act, Corps of Engineers Section 10 and 404 permits, etc.), and special purpose statutes designed for historical preservation or preservation of archaeological sites. These protections may be applied by either local or state government under the police power doctrine.

C. CURRENT PROGRAMS

The following material describes those programs that are currently operational within state and local government which relate to the provision of beach access and protection.

1. Access

a. DNR tidelands management policy and tidelands marking program - at the time of statehood in 1889, the State of Washington asserted its ownership in the beds and shores of all navigable waters up to and including the line of ordinary high water. From statehood to 1968, the state pursued a policy of selling public tidelands to private individuals. In 1968 the practice was restricted by policy directive and was discontinued by law in 1971. Approximately 1,160 miles of the tidelands originally owned by the state are in state ownership today. Some 400 miles of these tidelands are managed by the State Parks and Recreation Commission or the departments of Game and Fisheries with the remainder being managed by the DNR.

The DNR manages its tidelands for three principal uses. Approximately 75 percent of the tidelands are open for public recreational uses while the remaining 25 percent are committed for either commercial use or are held in reserve status. Reserve status implies an area of educational or scientific interest or utility or an area of special environmental importance and is conferred to prevent degradation of the area's resources. The principal characteristic of the DNR management policy is to emphasize multiple use. Every effort is made to avoid permanent single-purpose use on lands which have a multiple-use potential.

Since the majority of tidelands managed by DNR are accessible to the public only by boat, the department has embarked on an extensive program of marking public beaches. This program involves the placing of signs on the beaches to enable boaters to recognize the publicly owned lands.

The DNR Recreation Division has authority to acquire public access routes to managed tidelands. Priority is given to acquiring access from mainland tideland sites to public road systems. Where tideland recreation sites exist on islands without a central or public road system, no upland access will be attempted.

The DNR works on a cooperative basis with the State Parks and Recreation Commission in the development of upland parks adjacent to tideland areas. Tidelands management in such areas is turned over to the Parks and Recreation Commission by DNR if control of the tidelands is requested.

b. Game Department access programs - the Washington Department of Game operates five boat launching facilities on marine waters. These facilities were constructed to provide access for either hunters or sports fishermen. Several of them are located either on or adjacent to wildlife recreation areas managed by the Game Department and are intended for use primarily by waterfowl hunters. The remainder were constructed for use by saltwater sports fishermen. The Department of Fisheries has management authority over most marine fishes (e.g., salmon and other fish categorized as food fish) but the Game Department has authority over sea-run trout which are categorized as game fish. There is the possibility that additional launching facilities may be constructed in the future as need arises and funding is available.

The Game Department operates several wildlife recreation areas on marine waters. These lands are managed for wildlife habitat and are used for hunting in season. The beaches and wetland areas associated with these facilities are open to public use.

c. Fisheries Department programs - the Department of Fisheries is responsible for management of the state's food fish and shellfish resources. Two programs are operated which provide forms of beach access. The first program is funded through the IAC and consists of providing boat launching facilities and public fishing piers (with related artificial reefs) and also the acquisition of tidelands.

The second program operated by the Department of Fisheries which relates to beach access is the management of several areas of tidelands which have been legislatively designated for public recreational use. Clamming and gathering of other shellfish is the principal recreational activity conducted on these lands.

d. Interagency Committee for Outdoor Recreation - The IAC consists of 12 members including five citizens appointed by the Governor and representatives from the seven state agencies most directly concerned with outdoor recreation.

The IAC is the agency charged with distribution of the funding contained in the state's Outdoor Recreation account. The funding sources which make up this account include Referendum 28 (part of a statewide capital investment program known as the Washington Future Program), Initiative 215 (unclaimed pleasure boat marine fuel taxes), and the federal

Land and Water Conservation Fund. IAC also has responsibility for preparation and maintenance of the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP).

IAC funding is divided equally among state agencies and local government. Participating agencies from state government are the departments of Game, Fisheries, and Natural Resources, and the Parks and Recreation Commission. Most units of local government are eligible for funding provided that they have developed a park and recreation plan or a recreation element in their comprehensive plan which has been approved by the IAC. Indian tribes within the state recognized by the federal government are eligible for Land and Water Conservation Fund monies.

Funding is provided up to a maximum of 75 percent for all projects which are approved by the committee. Priorities have been established for the types of projects which will receive the highest consideration. Acquisition of shorelines is currently a high priority for both local and state agencies.

e. State Parks and Recreation Commission programs - the State Parks and Recreation Commission (hereinafter referred to as State Parks) is empowered to acquire, develop, operate and maintain recreational areas for the enjoyment of the public. According to data contained in the Washington CZM program document, there are 65 state parks in the coastal zone with a combined total of 24,000 acres. These parks range in size from .5 acre to 4,934 acres.

Through a variety of methods State Parks has authority to acquire tracts of land, including shorelands and tidelands, for park and parkway purposes. Funding is received both through direct appropriation by the legislature and through the IAC. In park projects containing shorelands, such facilities as boat launches, docks, landings and access roads may be constructed to enhance recreational opportunities for the public. The Commission has set policy for acquisition and development of seven different types of parks over which it has jurisdiction. Four of these are important in terms of their relationship to beach access: state parks; recreation areas; launch areas; and ocean beach access areas. The remaining three will be discussed under the section of this planning process which deals with protection.

In addition to its jurisdiction over state parks, the Commission has management authority over the Seashore Conservation Area. This area consists of

the lands which fall generally between extreme low tide and ordinary high tide along the majority of the Pacific Ocean beaches of the state. Public access points have been provided at intervals along the Seashore Conservation Area to enable the public to reach the beach. Driving is generally allowed along the beaches since they are designated as ocean beach highways, but is restricted to the upper portion in order to protect the razor clam resource. The ocean beaches receive extremely heavy public usage throughout the year, particularly during extreme low tides when clam digging is at its best.

Development and maintenance of the state's Scenic and Recreational Highway System is shared between the Department of Transportation and State Parks. Several coastal highways have been designated as part of the system. Planning and design standards for Scenic and Recreational Highways may include provision of scenic observation facilities, hiking trails, campsites, boat launching facilities, and entrance and exist roadways to observation points.

f. Local Government Programs - units of local government assume a significant role in the provision of parks and recreational facilities in the coastal zone including the provision of beach access. SCORP data indicate that about 25 percent of Washington's public saltwater shorefront is managed by local government for recreational use. As a result of their proximity to population centers, local parks and recreational facilities may receive heavy daily use and support a relatively high percentage of the demand for recreational opportunities in the state.

Local governmental units (including cities, counties, and certain special purpose districts) have the authority to acquire, develop and maintain recreational sites and facilities for the use of the public. In exercising that authority, local agencies have provided parks fronting on saltwater, swimming beaches, boat launches and ramps, marinas, visual access points, and other facilities.

Municipalities in the State of Washington have legal authority to provide parks and recreational facilities both inside and outside the corporate boundaries. Counties normally acquire and develop facilities that will serve a broader range of recreational needs than the cities. Within the county or metropolitan area a park and recreational district may be established for the purpose of planning for, acquiring, developing, and managing recreational sites. Port districts also have certain responsibilities in

the provision of recreational opportunities. These include construction, operation, and maintenance of wharves, piers, and boat landings of all types. A port may be authorized to construct, improve, and operate public parks and recreational facilities when these facilities relate to the port's comprehensive plan of harbor improvement or industrial development.

2. Protection

a. Natural Area Preserves System - the Natural Area Preserves System is a program administered by the Department of Natural Resources and is designed to establish a statewide system of aquatic and land area preserves. Areas are designated on the basis of their natural character, archeological or historic value, the presence of rare of endangered species, or scenic beauty. Several areas within the coastal zone have been designated or are being considered for designation as natural area preserves.

Management practices for each preserve are developed to assure the persistance of the qualities that make it worthy of preservation. As a consequence, public visitation for educational or recreational purposes is limited to the extent that there is no significant modification of natural or existing conditions. Boat moorage buoys, landings, trails, or other unobtrusive facilities may be provided to allow and direct access through the preserve.

Certain tideland areas under DNR jurisdiction are classified as reserves. This program is distinct from the Natural Areas Preserves System. Areas designated as tidelands reserves are set aside on the basis of their unique or special environmental qualities. Public access to such areas is not encouraged in order to preserve the ecological values for which they were set aside.

b. Open Space Taxation Act - The Open Space Taxation Act authorizes the assessment and taxation of certain lands on the basis of current use rather than true and fair value. The Act is designed to provide an incentive to property owners or contract purchasers to limit development of lands in order to protect or conserve natural and scenic resources. Farm and other agricultural lands, timberlands, and open space lands may qualify for current use classification.

As a voluntary program, property owners may apply to the granting authority for the current use assessment.

Members of the local legislative body(ies) comprise the granting authority which rules on applications and may attach conditions of approval. The granting authority, for instance, is authorized to require that the landowner provide an easement as a condition of approval. This is potentially useful in securing or maintaining access to publicly owned shorelands through private property.

If the granting authority accepts an application, an Open Space Taxation Agreement is sent to the applicant for his acceptance or rejection. In return for a current use tax assessment, the landowner agrees to not apply his classified land to any other use for a perod of ten or more years. Change of use or withdrawal of the land from classification prior to the expiration of the agreement period may subject the owner to additional taxes and other monetary penalties.

The Open Space Taxation Act may serve to protect or conserve resources in or near the coastal zone. Recreational opportunities, public access, and visual access may be enhanced.

c. Game Department habitat acquisition - The Department of Game is responsible for the management of both game and nongame wildlife. Protection is afforded to wildlife whether they are located on either private or public lands. The department acquires habitats for protection of nongame wildlife under a program funded by the sale of personalized license plates. The Game Department has estimated receipts from license plate sales at $250,000 annually. These monies will be used for all facets of the department's nongame wildlife programs, of which habitat acquisition is just one.

The department's purchase of wildlife habitat for inclusion in the state system of Wildlife Recreation Areas is important for protection purposes but has previously been considered in this planning process under access. This is due to the fact that the principal purpose for which such lands are acquired is to provide lands suitable for wildlife-oriented recreation such as hunting or fishing. It is true, however, that the placement of such wildlife habitat in Game Department ownership does provide a direct method of protection and a degree of control over unsuitable uses unattainable on lands which are not so owned.

d. Fisheries Department programs - the Department of Fisheries operates a system of oyster reserves which

were established by action of the legislature. These reserves are maintained for the purpose of providing oysters for sale, with the revenue being used for the maintenance and betterment of the reserves. An additional purpose is to insure that sufficient stocks exist to supply oysters to private growers and processors and to provide oysters for stocking on public beaches. The bulk of the oyster reserve acreage is in Willapa Bay but several sites are located in Puget Sound.

e. State Parks and Recreation Commission - as mentioned in Section (I)(c)(1)(e) of this planning process, the State Parks and Recreation Commission has adopted policies for the acquisition and development of seven different types of state parks. Three types are significant in terms of their relevance to the protection of public coastal areas: natural areas; conservation areas; and heritage areas.

Parks designated as natural areas are obligated to the conservation of the natural environment and for low density outdoor recreational activities. Protection of wildlife and natural features is the primary management objective for these areas. Site selection guidelines include geographically locating natural areas throughout the state for unobtrusive recreational use.

State conservation areas are established to protect, conserve, and selectively develop outstanding environmental basins for a wide range of outdoor recreational and conservation uses. These areas generally encompass a variety of physiographic features, one or more of which may have been threatened by uses incompatible with the provision of outdoor recreational facilities.

State heritage areas are designated for the preservation of unique geologic, paleontologic, archeologic, historic, scientific, ecologic and cultural features. Activities allowed on these areas are essentially limited to those directly associated with interpretation of the selected features of the sites. Where a degree of selectivity exists, priority is given to establishing state heritage areas near major population centers and along primary travel routes.

There are currently several natural areas located in the coastal zone but no conservation or heritage areas. The possibility exists, however, that either or both types may be acquired by State Parks in the future.

f. IAC funding distribution - the IAC grants funding for land acquisition and development to state agencies and to local government. The program was explained in Section I(c)(1)(d) of this planning process. A portion of these monies is used for acquisition of lands which can be categorized under one or more of the protection programs explained in this section of the planning process. Examples include the Game Department habitat acquisitions under the Wildlife Recreation Area program and certain categories of state parks.

3. Regulatory and Planning Programs

In addition to those state and local programs which relate directly to beach access or protection, there are several statutes which can best be described as regulatory or planning in orientation which are pertinent to this discussion. Only those which are most directly applicable will be covered below:

a. Shoreline Management Act - the Shoreline Management Act provides for a comprehensive planning and regulatory process for governing of activities conducted on shorelines of the state. The administrative focus of the program is on local government with state government acting in a review and support capacity. Under the terms of the Act, local governments are required to prepare master programs which place shorelines into one of four categories (environment designations) for the purpose of determining the level of use intensity which is most appropriate for them. Goals, policies and regulations are then developed for 22 types of use activities which are likely to be conducted on shorelines and these are in turn related to the environment designations.

The Shoreline Management Act relates to the protection of beaches and shoreline amenities primarily through its regulatory provisions and the permit system set up to enforce those provisions. The primary thrust of the Act is toward providing protection for shoreline resources while at the same time fostering all reasonable and appropriate uses. Master programs are designed to be applicable to individual jurisdictions and, hence, to reflect local desires consistent with state guidelines.

Beach access is provided for in the Act in that master programs are required to contain both a public access element and a recreation element. Conditions may also be attached to permits requiring the provision of public access as a part of project approval. Additionally, master programs must reflect

that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas and other recreational activities for the public.

b. Local government land use controls - local governments possess various planning and regulatory authorities which can be used to protect beach resources and provide increased public access. The shoreline master programs developed by each local government in the coastal zone provide a major tool in this regard and have been explained in the previous section.

Local governments also possess general land use planning authority by virtue of enabling statutes passed by the state legislature. Under this legislation it is possible for such standards as setbacks, parcel size, height limitations and permitted uses to be specified for a given area, with the zoning ordinance being the primary vehicle for realization of these standards.

In granting permits for waterfront developments, local governments may optionally require that some form of public access be provided as a condition for approval. This option may be pursued through the shoreline substantial development permit process or through some other locally administered permit system.

The state legislature has limited the possible actions of cities and counties with respect to vacation of streets and roads which abut on fresh or salt water. Local governments may plan for such areas only in the context of providing boat moorage for launching sites, parks, viewpoints, recreational areas, educational areas, or for port purposes. These prohibitions do not apply if the property is zoned for industrial uses.

II. BEACH DEFINITION AND IDENTIFICATION OF PUBLIC AREAS MEETING THE DEFINITION

A. BEACH DEFINITION

The term "beach" must necessarily be defined flexibly in order to cover the full range of shoreline types which are important at one time or another for public use or enjoyment. Although not specifically mentioned in the definitions, facilities such as boat launches and docks which are associated with the beach types described below are considered to be an integral part of those beaches. The definitions will apply to areas under public ownership or management as well as to other areas

available for public use. The beaches to be considered under this planning process are as follows:

1. Nearshore - an indefinite zone extending seaward from the line of extreme low tide.

2. Foreshore - the zone regularly covered and uncovered by the rise and fall of the tide, extending from the line of extreme low tide to the line of mean high tide. The substrate may be composed of rock, cobbles, gravel, sand, mud or silt, or any combination thereof. The foreshore may be quite extensive, as in the case of mudflats or sand beaches, or it may be essentially a vertical face, as in some rocky areas. This zone is sometimes known as the intertidal zone or tidelands.

3. Backshore - this zone extends upland from the line of mean high tide to a point where a marked change in material or physiographic form exists or to the line of permanent vegetation. It is thus of variable width throughout the coastal area. The backshore is usually acted upon by waves only when severe storms are combined with high tide.

4. Sand dunes - low mounds, ridges, banks, or hills of wind-blown sand commonly found along low lying seashores above the high tide level. Dunes may be bare or covered with vegetation and capable of shifting from place to place while retaining a characteristic shape. Typically, dunes exhibit four distinct features:

    a. Primary dunes - the first system of dunes shoreward of the water, having little or no vegetaion, which are intolerant of unnatural disturbances.

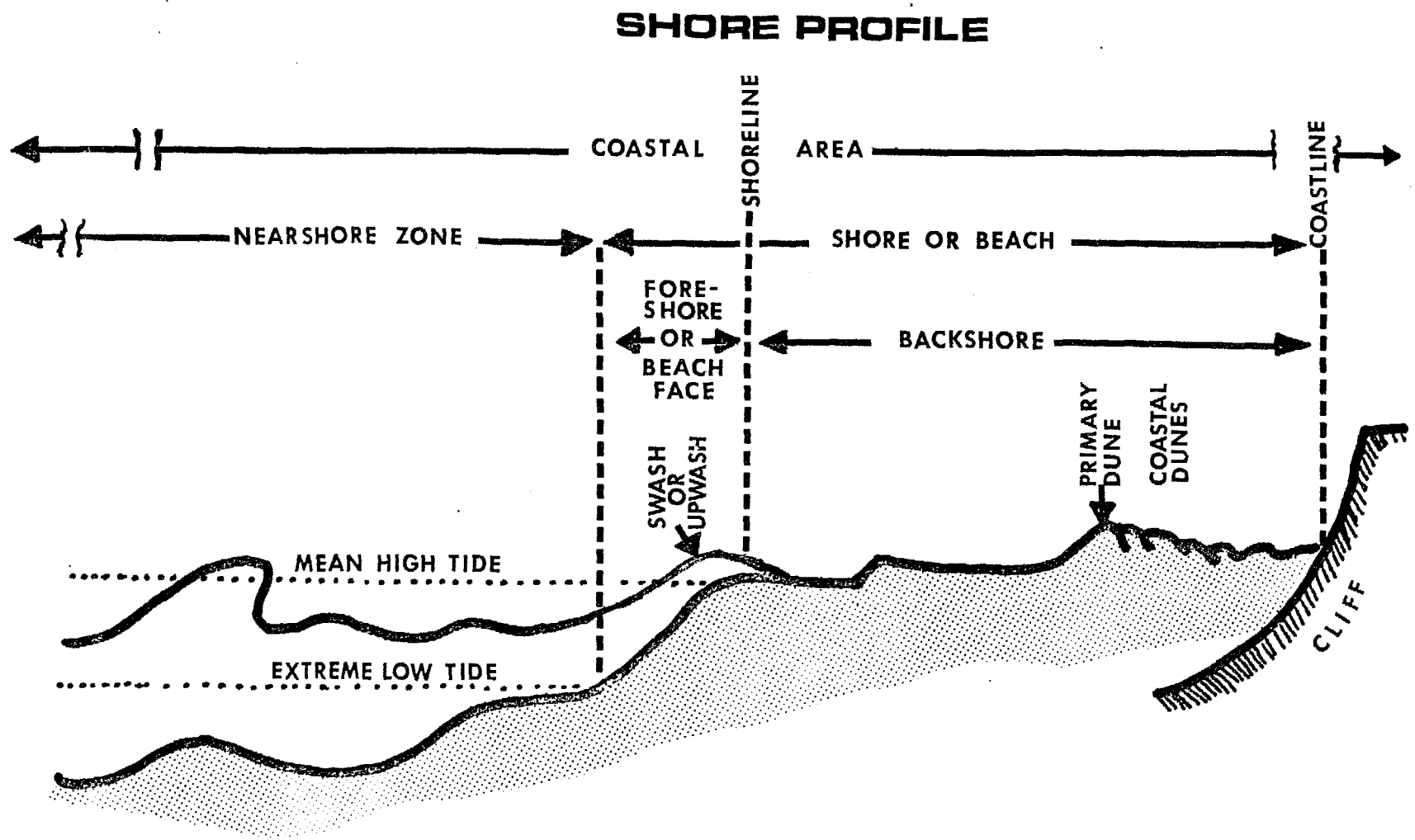
    b. Secondary dunes - the second system of dunes shoreward from the water, with some vegetative cover.

    c. Back dunes - the system of dunes behind the secondary dunes, generally having vegetation and some top soil, and being more tolerant of development than the primary and secondary systems.

    d. Troughs - the valleys between the dune systems.

5. Spits and bars - Spits and bars are natural formations composed of sand and gravel and shaped by wind and water currents and littoral drifting. Generally a spit is formed from a headland beach (tall cliff with a curved beach at the foot) and extends out into the water (hooks are simply hookshaped spits). While spits usually have one end free in open water, bars generally are attached to land at both ends. These natural forms enclose an area which is protected from wave action, allowing life

FIGURE 1


SHORE PROFILE
COASTAL
SHORELINE
AREA
COASTLINE
NEARSHORE ZONE
SHORE OR BEACH
FORE-
SHORE
OR
BEACH
FACE
BACKSHORE
SWASH
OR
UPWASH
PRIMARY
DUNE
COASTAL
DUNES
MEAN HIGH TIDE
EXTREME LOW TIDE
CLIFF

forms such as shellfish to reproduce and live protected from the violence of the open coast.

6. Pocket beach - a small, crescentic beach formed at the head of a bay by materials eroded from adjacent headlands and carried to the bayhead by longshore currents and/or storm waves. Also known as a bayhead beach.

7. Wetlands - transitional zones between marine and upland environments. Marshes, bogs, swamps, floodways and river deltas are included in this category.

8. Uplands - publicly owned or managed areas landward of the backshore which provide visual access to coastal waters.

9. Islands - generally speaking, islands are land masses surrounded by water. It is impossible to state with absolute certainty the size at which an entire island should be considered as a "beach." Therefore, islands which are relatively small in size and are held in public ownership will be considered "beaches" while larger islands will be considered in the same manner as the mainland (i.e., in terms of the component parts of its beaches; foreshore, backshore, etc.).

10. Urban waterfronts - waterfront areas associated with heavily developed or urbanized locations. Generally they are associated with cities but may include adjacent areas. Urban waterfronts may include not only the near-shore, foreshore and backshore but also a variety of waterfront facilities such as public viewpoints, docks, piers, walkways, bike paths and parking areas.

The definition of "beach" developed above encompasses nearly all coastal features which currently or potentially have access or protection needs or values. Taken together, the elements of the definition represent the wide range of coastal resources which meet public recreational needs, or require protection for the maintenance of physical or biological resources or recreational opportunities.

B. IDENTIFICATION OF PUBLIC AREAS MEETING THE DEFINITION OF "BEACH"

A variety of sources identify public areas along Washington's coast which meet the definition of "beach" set forth in the preceding section. These sources are described below. No attempt will be made to identify individual sites requiring access or protection.

In 1971, the IAC completed a Statewide Recreational Lands Inventory. The inventory included a quantification of publicly owned saltwater shorelands, historical or cultural areas, outstanding natural areas, and scenic and recreational roads

and highways. This inventory utilized the "area-type" concept wherein recreational areas were typed based on major environmental features together with the use capabilities of land and water resources contained within them. With the use of conversion standards, acquisition and development needs were assessed. Deficiencies in acreage were computed on a statewide basis for such areas as saltwater shorelands, freshwater shorelands, regional and local recreation areas, and trails. The results of the inventory were used in production of the 1973 version of the Statewide Comprehensive Outdoor Recreation and Open Space Plan. As mentioned in the Supply and Demand section of this planning process, a user-needs deficiency of 16,345 acres of saltwater shorelands was determined.

A public lands inventory was compiled in 1977 by the IAC which identified public outdoor recreational facilities and sites throughout the state. This current inventory differs from the one conducted in 1971 in that it is designed to reveal facility-specific rather than area-specific deficiencies. The inventory included a survey of recreational areas with saltwater frontage and an identification of associated facilities such as parking, shore access, pier or dock availability for fishing, boat launching lanes, trails, or swimming beach. Supply data and demand estimates will be used to determine deficiencies in type, size, and location of recreation facilities throughout the state.

The State Parks and Recreation Commission has produced and periodically updated an inventory of the lands under its jurisdiction. All State Parks' lands are identified by name, type of park, location, acreage, and if applicable, feet of saltwater frontage. The inventory also includes a chronological listing of land acquisitions and disposals, and indicates which lands are under lease, easement, permit or license for use by other agencies.

An ocean beach study was conducted by State Parks in 1976 to analyze the seashore conservation area (discussed in part (I)(c)(1)(e) of this planning process). The study included recommendations for preservation and conservation of the Pacific Ocean beaches. Parks and access roads were depicted on maps, with the availability of parking facilities indicated for each park.

The Washington State Attorney General has expressed an opinion concerning public use of the Pacific Ocean beaches (AGO#27,1970). It is the opinion of the Attorney General that "the public, vis-a-vis the private upland owner, has the right to free and unhindered use and enjoyment of the wet and dry sands area of the Pacific Ocean beaches, by virtue of a long established customary use of those areas." The wet sand area is defined as "that area over which the tide ebbs and flows on a regular, daily basis: generally below, or seaward of, the line of mean high tide." The dry sand area is defined as "that area lying

between the line of mean high tide and the line of permanent visible vegetation." The rights of the public to the use of those ocean beaches do not extend over the wet and dry sand areas within the external boundaries of the Quinault Indian Reservation.

The State Parks and Recreation Commission shares management of the state's scenic and recreational highways with the state Department of Transportation. Designated highways and development guidelines are set forth in the Scenic and Recreational Highway Act of 1967.

Another document which is useful in identifying public areas suitable for greater access or protection is the Washington Marine Atlas, produced by the DNR in 1977. Features depicted in the Atlas include beaches and shoreside public parks, public access tidelands, marinas, boating rendezvous and anchorage areas, underwater recreation areas (for scuba diving), and salmon and nonsalmon sports fishing areas. Agencies responsible for management of these public sites and facilities are listed in the Atlas. DNR has also published several documents which identify those beaches which have been marked under the department's public beach marking program.

DNR, together with the departments of Game and Ecology, the State Parks and Recreation Commission and the IAC is currently working with the Nature Conservancy, a private conservation organization, on a statewide natural areas inventory. This two-year project is designed to lead to development of a natural areas plan with identification of areas suitable for protection in the natural areas preserves system. The inventory will become an official addendum to SCORP and will be used for the establishment of funding priorities.

The National Shoreline Study produced by the U.S. Army Corps of Engineers in 1971 provides data on the resource base of Washington's coast. This inventory considers such factors as physical characteristics, historical changes and ownership characteristics of the state's shoreline. Shorelines with beach or without beach (having bulkheads, marsh, rocky coastlines or revetments) are distinguished.

Local government park and recreation plans, as well as the inventories completed under the Shoreline Management Act, are valuable in identifying access or protection needs in coastal areas. This is particularly significant considering the extent to which local government manages the state's public shorelands. Several local governments have developed publications intended to identify public access areas within their boundaries. Examples include the Shoreline Access Study done by Island County and a map produced by the City of Seattle which identifies access and viewpoints.

All of the studies, inventories or publications referenced above provide data relative to the existence and location of publicly owned shorefront areas. Decisions relating to acquisition of access to individual parcels must necessarily be subject to individual agency priority and funding availability.

III. ARTICULATION OF STATE POLICIES

This sections contains policies which have been articulated by both the legislature of the State of Washington and state administrative agencies pertaining to beach access and protection. Reference will be made to the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), and other documents. The organization of this section will follow a format based on the agency most responsible for administration of the statute, WAC chapter, or other document cited.

Part A of this section contains policy statements which are generally substantive in nature and most directly express the state's management philosophies and concerns relating to the provision of beach access and protection.

Other state policies applicable to beach access are either procedural in nature, provide authorities to state agencies and local government, or otherwise less directly express the state's philosophies. These policies are reproduced and/or summarized in part B.

Part A POLICY STATEMENTS

1. Department of Ecology

The Department of Ecology is responsible for administration of the Shoreline Management Act (Chapter 90.58 RCW) and several sections of the Washington Administrative Code which derive from this statute.

RCW 90.58.020 - LEGISLATIVE FINDINGS -- STATE POLICY ENUNCIATED --USE PREFERENCE. [Pertaining to shorelines of statewide significance:] Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational, uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and

environment of the shoreline area and any interference with the public's use of the water.

RCW 90.58.320 - HEIGHT LIMITATIONS RESPECTING PERMITS. No permits shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-16-040(4)(b)(i) - NATURAL ENVIRONMENT. The natural environment is intended to preserve and restore those natural resource systems existing relatively free of human influence. Local policies to achieve this objective should aim to regulate all potential developments degrading or changing the natural characteristics which make these areas unique and valuable.

The main emphasis of regulation in these areas should be on natural systems and resources which require severe restrictions of intensities and types of uses to maintain them in a natural state.

WAC 173-16-040(4)(b)(ii) - CONSERVANCY ENVIRONMENT. The objective in designating a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to insure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.

The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. For example, a conservancy environment designation can be used to complement city, county, or state plans to legally acquire public access to the water.

WAC 173-16-040(4)(b)(iii) - RURAL ENVIRONMENT. The rural environment is intended for those areas characterized by intensive agricultural and recreational uses and those areas having a high capability to support active agricultural practices and intensive recreational development.

WAC 173-16-040(4)(b)(iv) - URBAN ENVIRONMENT. In the master program, priority is also to be given to planning for public visual and physical access to water in the urban environment. Identifying needs and planning for the acquisition of urban land for permanent public access to the water in the urban environment should be accomplished in the master program. To enhance waterfront and insure

maximum public use, industrial and commercial facilities should be designated to permit pedestrian waterfront activities. Where practicable, various access points ought to be linked to nonmotorized transportation routes, such as bicycle and hiking paths.

WAC 173-16-040(5) - SHORELINES OF STATEWIDE SIGNIFICANCE.

(d) Protect the resources and ecology of shorelines. Development guidelines;

(i) Leave undeveloped those areas which contain a unique or fragile natural resource.

(iii) Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human uses.

(e) Increase public access to publicly owned areas of the shorelines. Development guidelines:

(ii) Locate development inland from the ordinary highwater mark so that access is enhanced.

(f) Increase recreational opportunities for the public on the shorelines. Development guidelines:

(1) Plan for and encourage development of facilities for recreational use of the shorelines.

(ii) Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for nonmotorized access to the shorelines.

WAC 173-16-060(2) - AQUACULTURE

(b) Recognition should be given to the possible detrimental impact aquacultural development might have on the visual access of upland owners and on the general aesthetic quality of the shoreline area.

WAC 173-16-060(3) - FOREST MANAGEMENT PRACTICES

(c) Shoreline areas having scenic qualities, such as those providing a diversity of views, unique landscape contracts, or landscape panoramas should be maintained as scenic views in timber harvesting areas. Timber harvesting practices, including road construction and debris removal, should be closely regulated so that the quality

of the view and viewpoints in shoreline areas of the state are not degraded.

WAC 173-16-060(4) - COMMERCIAL DEVELOPMENT

(a) Although many commercial developments benefit by a shoreline location, priority should be given to those commercial developments which are particularly dependent on their location and/or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

(c) An assessment should be made of the effect a commercial structure will have on a scenic view significant to a given area or enjoyed by a significant number of people.

WAC 173-16-060(7) - OUTDOOR ADVERTISING, SIGNS AND BILLBOARDS

(c) Vistas and viewpoints should not be degraded and visual access to the water from such vistas should not be impaired by the placement of signs.

(d) Outdoor advertising signs (where permitted under local regulations) should be located on the upland side of public transportation routes which parallel and are adjacent to rivers and water bodies (unless it can be demonstrated that views will not be substantially obstructed).

(e) When feasible, signs should be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.

WAC 173-16-060(8) - RESIDENTIAL DEVELOPMENT

(c) Subdividers should be encouraged to provide public pedestrian access to the shorelines within the subdivision.

WAC 173-16-060(9) - UTILITIES

(b) Whenever these facilities must be placed in shoreline areas, the location should be chosen so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

(c) To the extent feasible, local government should attempt to incorporate major transmission line rights of way on shorelines into their program for public access to and along water bodies.

WAC 173-16-060(10) - PORTS AND WATER-RELATED INDUSTRY

(b) Port facilities should be designed to permit viewing of harbor areas from viewpoints, waterfront restaurants and similar public facilities which would not interfere with port operations or endanger public health and safety.

(c) Sewage treatment, water reclamation, desalinization and power plants should be located where they do not interfere with and are compatible with recreational, residential or other public uses of the water and shorelands.

WAC 173-16-060(11) - BULKHEADS

(c) Consider the effect of a proposed bulkhead on public access to publicly owned shorelines.

WAC 173-16-060(18) - ROAD AND RAILROAD DESIGN AND CONSTRUCTION

(e) Scenic corridors with public roadways should have provision for safe pedestrian and other nonmotorized travel. Also, provision should be made for sufficient viewpoints, rest areas, and picnic areas in public shorelines.

WAC 173-16-060(20) - ARCHEOLOGICAL AREAS AND HISTORIC SITES

(b) Where possible, sites should be permanently preserved for scientific study and public observation.

WAC 173-16-060(21) - RECREATION

(a) Priority will be given to developments, other than single-family residences which are exempt from the permit requirements of the act, which provide recreational uses and other improvements facilitating public access to shorelines.

(b) Access to recreational locations such as fishing streams and hunting areas should be a combination of areas and linear access (parking areas and easements, for example) to prevent concentrations of use pressure at a few points.

(f) To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods. Automobile traffic on beaches, dunes and fragile shorelands resources should be discouraged.

(g) Recreational developments should be of such variety as to satisfy the diversity of demands from groups in nearby population centers.

(h) The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.

(i) Facilities for intensive recreational activities should be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features' attractive recreational uses.

2. Interagency Committee for Outdoor Recreation (IAC)

The IAC was created within Chapter 43.99 RCW (Marine Recreation Land - Interagency Committee for Outdoor Recreation) and charged with several functions including disbursement of funds contained within the state's outdoor recreation account and preparation of the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP). The following policies are drawn from the current edition of SCORP (pp. 9-16):

Recommendations:

2. Programs should give priority to providing water-oriented opportunities close to population concentrations.

3. Programs and policies should be emphasized and implemented to acquire legal public access to state-owned tidelands. Local subdivision regulations should require provisions for public access to public tidelands. Recreation agencies should purchase tidelands of recreational value to connect large pieces of tidelands managed by public agencies.

4. Public access, including necessary uplands should be provided to state-owned shorelands, especially to those state-owned islands, sand bars, and state-owned accreted land on rivers.

5. High priority should be given to the retention of those estuaries and/or mouths of rivers, especially those of statewide significance, which presently are in or nearly in a natural state.

15. Increased efforts need to be initiated to place smaller islands of this state, especially those in North Puget Sound, in public ownership and/or to retain them in as near a natural state as feasible.

16. Those swamp, marsh, or bog sites with natural qualities and having unique values for wildlife conservation, scientific, educational, or recreational purposes should be retained in their natural state.

17. Park and recreation areas and open space should not be subject to diversion to other uses. Where necessary, provision should be made for replacement in kind in the same general location.

24. A greater variety of recreational opportunities with easy travel distance should be made available to a larger segment of the population.

27. Outdoor recreational facilities should be located within easy access of persons living in heavily populated urban centers. High priority should be placed on recreational opportunities and projects for people with low mobility, particularly for those in central areas of larger cities.

40. Zoning, scenic easements, purchase and lease-back, preferential tax incentives and other landuse controls, particularly for land fronting on bodies of water and flood plains, should be used to protect recreational, esthetic and ecological values. State and local governments should be encouraged to revise codes, ordinances, regulations and enforcement practices where revision will enhance such programs.

3. Department of Natural Resources (DNR)

Among DNR's responsibilities are the management of the state's marine bedlands and tidelands and administration of the state Natural Area Preserves system. The following policies are drawn from the "Land Use Allocation Plan [for] Department of Natural Resources Managed Marine Lands" developed by DNR in February 1973:

Policy 2: Public Use

To provide for the protection and improvement of marine lands for public use.

Guidelines:

2. Whenever practical, leases of first class tideland will provide for public access to the water.

5. Where the state owns the abutting uplands, priority will be given to joint development of the uplands and second class tidelands for public use.

11. Motorized vehicular travel will not be permitted on DNR's managed public use tidelands.

Part B SECONDARY POLICIES

1. Department of Ecology

RCW 90.58.020 - directs the DOE and local governments developing master programs to give preference to certain uses on shorelines of statewide significance. Among other considerations, preference is given to uses which increase public access and recreational opportunities on the shoreline.

RCW 90.58.100 - defines the elements which must be included within each master program. Such elements address public access, coastal recreation, various shoreline uses, conservation of resources, and historic, cultural, scientific and educational values associated with the coastal zone.

RCW 90.58.240 - authorizes the DOE and local governments to acquire lands and easements on shorelines in order to implement master programs.

WAC 173-16-040(3) - further defines master program elements.

WAC 173-16-040(5) - establishes guidelines for development on shorelines of statewide significance. Guidelines include the requirement that master programs give priority to increasing public access to publicly owned shorelines.

WAC 173-16-060 - directs local government to identify the types of natural systems within which uses are proposed and to impose development regulations such that the integrity of the natural systems may be maintained.

WAC 173-16-060(21) - guides local government in developing a recreation use element. Among other considerations, master programs should (1) encourage the use of linear access for linking shorefront parks and public access points, and (2) develop standards for the preservation and enhancement of scenic views and vistas.

WAC 173-16-070 - addresses the granting of variances and conditional use permits. One criterion for the granting of a conditional use permit is that the use will not interfere with public use of public shorelines.

2. Interagency Committee for Outdoor Recreation (IAC)

RCW 43.99.060 - creates the outdoor recreation account into which all monies made available for outdoor recreation purposes may be deposited.

RCW 43.99.080 - addresses the distribution of funds transferred to the outdoor recreation account.

RCW 43.99.110 - creates the IAC, defines the committee membership and establishes the terms of appointed members.

RCW 43.99.120 - requires the submission of plans from state or local agencies desiring funds from the outdoor recreation account.

RCW 43.99.124 - authorizes the IAC to receive funds and enter into agreements or contracts with federal agencies.

Within the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP) are two sections which contain recommendations or policies that relate to beach access or protection and are procedural in nature:

Recommendations (pp. 9-16)

1. Standards for shoreline development should be established and enforced throughout the state.

12. Puget Sound should be identified as a federal-state recreational waterway, a designation that recognizes its value for water related recreation.

14. Acquisition and development programs that combine recreation opportunities and environmental enhancement should be recognized as a special need in highly developed areas. Environmental quality criteria should be established to limit the encroachment of noncompatible uses on recreation and open space systems and prevent further deterioration of already damaged areas.

23. Washington should seek to exceed national outdoor recreation standards for recreation land acquisition and development in order to provide recreation areas and facilities comparable to the state's superior environmental opportunities.

32. A fund source to implement the State Scenic and Recreational Highway System should be established. Criteria for inclusion to the system, standards for development, controls for the protection of scenic corridors, and priority for the funding and development of routes should be established.

Funding Priorities (pp. 53-57)

IAC LOCAL AGENCY PRIORITIES

General Priorities

Acquire and develop fresh and saltwater shorelines intended to provide facilities for multiple water-related activities.

Acquire, develop, and/or redevelop recreation areas for a wide variety of activities to serve the local population.

Specific Priorities

Listed below is the order of priority for acquisition and development of specific kinds of recreational areas. This list is not all-inclusive in that other types of lands may be considered for fund allocation where local plans or policy substantiate a public need for such lands. Development is intended to include major redevelopment projects where the conditions of existing recreation facilities have eliminated or drastically reduced use of the site. Within each of the seven priorities, facilities designed for multiple use will be given priority over single-purpose facilities.

1. Acquisition of Shorelines

2. Development of Local Recreation Areas

3. Development of Shorelines

4. Acquisition of "Locally Significant Features"

5. Acquisition of Local Recreation Areas

6. Trail Acquisition and Development

7. Acquisition and Development of Regional Recreation Areas

PRIORITY I - SHORELINES ACQUISITION

First priority is the acquisition of shorelines and necessary uplands to support multiple water-related activities accessible to local residents.

Priority order is:

1. Acquisition of shorelines in urbanized areas where the resource is in danger of being lost to other uses.

2. The acquisition of saltwater shorelines.

3. The acquisition of recreation sites on shorelines.

PRIORITY III - SHORELINES DEVELOPMENT

Third priority is the development of facilities to provide recreational opportunities which are related to or enhanced by water.

Priority order is:

1. The development of facilities which promote multiple use of shorelines and immediately adjacent uplands.

2. Development of swimming facilities and water-related upland uses.

3. The development of boating access, destination areas, and upland parking.

IAC STATE AGENCY CAPITAL BUDGET PRIORITIES

These priority objectives provide the framework through which the IAC will accomplish those programs which in its composite judgment provide a major emphasis toward correcting the recreational deficiencies in the state and in enhancing the existing outdoor recreation opportunities and scenic beauty now provided for the state's citizens and visitors. These priorities pertain to state agencies only and are not intended to reflect priorities or programs for other levels of government.

A. General Priorities

The general priorities for consideration of state agency capital requests are:

Acquire critical, scenic, and unique lands with recreation and/or conservation values which are not duplicated anywhere else within the state.

Develop outdoor recreation facilities for boating, camping, fishing, hunting, picnicking, sightseeing, trails and related outdoor recreation activities.

Acquire water-oriented lands especially where potential supply is limited.

Provide public access to existing state-owned or controlled lands, tidelands and beaches.

B. Specific Priorities

Listed below is the order of priority for acquisition and development of specific kinds of recreational areas. This list is not all-inclusive in that other types of lands may be considered for fund allocation where the public need for such lands is adequately substantiated.

1. Critical Resource Acquisition
2. Critical Resource Development
3. Saltwater Acquisition
4. Freshwater Development
5. Saltwater Development
6. Freshwater Acquisition
7. Regional Acquisition and Development
8. Trails
9. Scenic Roads
10. Forest

PRIORITY III - SALTWATER ACQUISITION

The highest priorities for saltwater shorelands will be given to acquisition of beaches and to public rights for access to publicly owned beaches which may be used with a minimum of development along the Pacific Ocean, Strait of Juan de Fuca, San Juan Islands, Hood Canal, Puget Sound, Willapa Bay, Grays Harbor and along the Columbia River as far inland as Cathlamet. These priorities include as well, provision for the acquisition of upland areas necessary for boating access, supportive parking, camping and other facilities which must be physically located away from fragile beach areas. However, the acquisition of such upland areas will be high priority only when contiguous to substantial publicly owned or controlled beach areas.

The priority order for acquisition is:

1. Acquisition of right of way for public recreational access to state-owned tidelands and beaches in the North and South Pacific Coast, North, Central and South Puget Sound and the lower Columbia districts.

2. The acquisition of boating access sites in the North Coast and the North, Central, and South Puget Sound districts.

3. Acquisition of boater destination areas in North Puget Sound.

4. Acquisition of large saltwater shoreland areas to provide regional-type recreational opportunities on all areas of Puget Sound.

5. Acquisition of saltwater access in the Lower Columbia River district.

PRIORITY V - SALTWATER DEVELOPMENT

Development priorities for saltwater shorelands are for the provision of recreational access to saltwater beach, tideland and water areas and necessary ancillary support facilities for fishing, boating, picnicking, camping and related emerging recreational activities.

The priority order for development is:

1. The development of public access to state-owned tidelands and beaches in the South Pacific Coast and North, Central and South Puget Sound districts.

2. The development of boating access sites in the North, Central and South Puget Sound districts.

3. Development of boating designation areas in the North, Central and South Puget Sound districts.

4. Development of boating access in the Lower Columbia District.

3. Department of Natural Resources (DNR)

RCW 43.30.300 - authorizes the DNR to: (1) develop primitive outdoor recreation facilities on lands under its jurisdiction; (2) acquire rights of way and develop public access to its lands; and (3) receive and expend funds from federal and state sources.

RCW 79.68.010 - directs the DNR to manage its lands under a multiple-use concept provided that certain conditions are met.

RCW 79.68.020 - defines multiple use.

RCW 79.68.050 - identifies multiple uses which may be compatible with financial obligations in the management of trust lands.

RCW 79.68.080 - directs the DNR to foster various uses of the aquatic environment under its jurisdiction.

RCW 79.68.090 - authorizes the DNR to adopt a multiple-use land resource allocation plan and lists the factors to be considered in any such plan.

RCW 79.70.010 - defines the purpose of the establishment of a state system of natural area preserves.

RCW 79.70.020 - defines terms relevant to the Natural Area Preserves Act.

RCW 79.70.030 - prescribes the powers which DNR may use to set aside, preserve and protect natural areas within the state.

RCW 79.70.040 - prescribes the powers DNR may use regarding transactions involving public lands designated as natural area preserves.

In February 1973 the DNR prepared a land use allocation plan for marine lands subject to its management. The following policies are drawn from this plan:

Policy 2: Public Use

To provide for the protection and improvement of marine lands for public use.

Guidelines:

1. Selected second-class tideland tracts of 1,000 contiguous feet or more, or smaller areas of special recreational quality, which have not been withdrawn for governmental or aquacultural uses, will be managed for public use.

3. Areas of second-class tidelands designated for public use will be identified as public use beaches, properly advertised and marked, and will be maintained on a regular basis for public use.

4. Areas allocated for public use will not be managed to produce a profit for a concessionaire or the administering agency without a lease fee being charged.

6. Selected second-class tidelands will be set aside for development of self-guiding marine nature walks.

7. Selected second-class tidelands capable of clam or oyster production, except those designated for aquacultural uses, will be set aside for public use.

8. Provisions shall be made to insure that traditional sports fishing areas are protected from competing uses that create obstructions.

9. Notice will be served to the current lessees of tidelands allocated for future public use, that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

10. Bedlands abutting upland parks shall be considered for underwater parks.

12. In recognition of the increasing impact on the recreating public on the state's beaches, new programs will be devoted to public education about stewardship of state marine resources.

Policy 4: Protection of the Natural Marine Environment

To protect and enhance the quality of the natural marine environment.

Guidelines:

1. Provisions for leasing tidelands and beds shall include requirements for protecting the natural marine environment.

2. Areas of special educational or scientific interest or areas of special environmental importance may be withdrawn as reserves and protected from competing uses.

4. State Parks and Recreation Commission

The commission has jurisdiction over the Seashore Conservation Area and responsibility for the management of state parks. Administration of the Scenic and Recreational Highway System is shared between the Parks and Recreation Commission and the Highway Commission.

RCW 43.51.040 - authorizes the commission to acquire tracts of land, including shore and tidelands, for park and parkway purposes.

RCW 43.51.220 - authorizes the commission to establish landing facilities for small pleasure boats in the Puget Sound region.

RCW 43.51.250 - authorizes the commission to provide public and private access to tidelands.

RCW 43.51.650 - provides a declaration of principles regarding the establishment of the Seashore Conservation Area.

RCW 43.51.655 - establishes the Seashore Conservation Area and designates it boundaries.

RCW 43.51.660 - grants the State Parks and Recreation Commission jurisdiction over the Seashore Conservation Area.

RCW 43.51.665 - establishes principles and purposes to be followed in administering the Seashore Conservation Area.

RCW 79.16.172 - sets aside portions of the Pacific Ocean beaches as public recreation areas.

RCW 47.39.010 - creates a scenic and recreational highway system.

RCW 47.39.030 - allocates costs between the Highway Commission and the Parks and Recreation Commission for maintenance of the highway system.

RCW 47.39.050 - offers standards for consideration in the planning and design of scenic and recreational highways.

Several policies and philosophies have been endorsed by the Parks and Recreation Commission regarding the management of the various types of state parks. These statements are reproduced below:

> "State Parks are to continuously service man's spiritual, mental, and leisure time physical needs through the use of selected outstanding natural resources. This is to be accomplished by simultaneously protecting and conserving the resource; and by providing a full range of nonurban outdoor educational and recreational services and opportunities to a wide range of users with diversified interests and needs.
>
> "State Conservation Areas are to protect, conserve, and selectively develop outstanding environmental basins. They shall provide for a mix of sustainable outdoor recreation and conservation uses.
>
> "State Heritage Areas are to preserve and/or interpret selected areas or features for the education and enjoyment of the public.
>
> "State Launch Areas are to respond to man's needs to associate with water and to participate in boating oriented activities upon it. These areas are to provide a means by which the public can be assured of sustained access to state waters.

"State Natural Areas are to respond to man's needs for readily available "conservatories" of nature and open spaces. Emphasis is directed toward nature and the conservation of native flora, fauna, and the natural amenities of the area. Human wants for other than naturally existing educational and recreational opportunities are considered secondary to nature's requirement for the sustained maintenance of its natural balances.

"State Recreation Areas are to respond to man's needs for readily available areas for outdoor recreational pursuits. They are to provide a maximum volume and variety of outdoor recreational opportunities to a maximum number of participants. Primary emphasis is on the provision of service and facilities for large volumes of outdoor recreational activities with secondary recognition given to the conservation of the natural qualities of the area.

"State Ocean Beach Access Areas provide the public with opportunities for recreational activities in a beach environment. Public pressure for increased use of Washington's ocean beaches makes it necessary to provide certain recreational and sanitary facilities. Where feasible, the state ocean beaches shall be preserved in their present state; everywhere they shall be maintained in the best possible condition for public use. The access areas shall be developed to provide access while not infringing upon the intrinsic values of the beach environment and consistent with the provisions of the Seashore Conservation Act; Chapter 43.5.650 through 43.4.685 of the Revised Code of Washington."

5. Department of Fisheries

The Department of Fisheries conducts the majority of its recreation programs under the general authority granted by the legislature to the department and its director. These authorities are found in Chapter 43.17 and 75.08 of the Revised Code of Washington. In addition, several specific statutory provisions relating to the Department of Fisheries are described below:

RCW 75.24.060 - reserves to be productive, self-maintaining -furnish shellfish stock.

RCW 79.16.175 - Reserves certain public tidelands for public recreational use and the taking of fish and shellfish.

RCW 79.16.176 - authorizes the director of Fisheries to take action to provide access to the tidelands referred to above.

RCW 75.24.060 - provides policy for the management of oyster reserves.

RCW 75.08.030 - lists the facilities which shall be established and maintained by the director of Fisheries.

6. Department of Game

The Department of Game acquires lands for both access and protection purposes as well as managing the state's game and nongame wildlife.

RCW 77.12.175 - establishes a program which channels revenues from the sale of personalized license plates toward the support of wildlife resources in the state.

RCW 77.12.200 - authorizes the director of Game to acquire property for hatchery sites, eyeing stations, rearing ponds, habitats, sanctuaries, etc.

7. Local Governments

The authority for acquisition of land for park and recreation purposes and for the operation of recreation facilities is contained within Titles 35 and 35A RCW for cities and Title 36 RCW for counties. These titles also contain the planning enabling statutes for both cities and counties. Other distinct statutory provisions include:

RCW 35.79.030 - prohibits cities or towns from vacating streets abutting on salt or freshwater bodies unless such vacation is sought for certain public purposes.

RCW 36.87.130 - imposes a limitation similar to the above statute regarding the vacation of county roads.

RCW 58.17.110 - provides criteria for the approval or disapproval of subdivisions and dedications.

The following citations relate to the provision of park and recreation facilities by port districts.

RCW 53.08.260 - authorizes port districts to provide public park and recreation facilities.

RCW 53.08.270 - directs the port districts to submit plans for the acquisition or operation of any park or recreation facilities to other specified agencies for approval.

The following citations are drawn from the Open Space Taxation Act. Administration of the Act is by local government but responsibility for the issuance of administrative regulations and necessary forms lies with the State Department of Revenue:

RCW 84.34.037 - outlines procedures and authorities for the submission, review, and processing of applications for current use classification.

RCW 84.34.210 - authorizes local governments to acquire selected open space land, timber land, and farm or other agricultural land for public use.

IV. DESIGNATION OF SHOREFRONT AREAS AS AREAS OF PARTICULAR CONCERN

Additional areas of particular concern (APC's) will not be identified in this planning process. Those areas currently designated as APC's include several locations important for their recreational significance. In addition, the extraordinary protection granted by "shoreline of statewide significance" designations cover many other recreationally significant locations. Existing state and local programs are fully equipped to preserve and protect recreational resources and currently operate to a high degree of effectiveness in this regard.

V. IDENTIFICATION OF FUNDING PROGRAMS WHICH CAN BE USED TO MEET MANAGEMENT NEEDS

The principal sources of funding for acquisition and development of beach recreation and protection facilities are federal Land and Water Conservation Fund monies distributed by the Heritage Conservation and Recreation Service together with state funds provided through Referendum 28 (Washington Futures bond issue) and Initiative 215 (marine gas tax monies). These funds are distributed through the IAC funding process.

In addition to the funding provided through the IAC, several agencies receive direct funding from federal and state sources. Examples include the monies received by the Department of Game for nongame wildlife programs from the sale of personalized license plates and federal participation in the construction of boating facilities through Corps of Engineers assistance provided to local port districts.

Funding for regulatory programs is received from a variety of sources. Not the least of such funding programs is the monies granted to the state under Section 306 of the CZMA. Administration of the Shoreline Management Act by both state and local government is financially aided through this source. Most state agencies receive direct appropriations from the legislature for the conduct of regulatory programs under their control.

Section 315 of the CZMA authorizes the Secretary of Commerce to make grants to coastal states for the purpose of acquiring lands to provide for access to public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological or cultural value, and for the preservation of islands. As yet, no funds have been appropriated for this purpose but it remains a potential source of acquisition monies which could be used to meet management needs.